

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 30, 2002

+ + + + +

The Public Meeting convened in Room 200 South,
441 Fourth Street, Northwest, Washington, D.C. 20001, pursuant
to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
(Case Nos. 16871 and 16861)	
PETER MAY	Commissioner
(Case Nos. 16832 and 16869)	

STAFF PRESENT:

SHERI M. PRUITT	Secretary, BZA
BEVERLY BAILEY	Office of Zoning
PAUL O. HART	Office of Zoning
JOHN NYARKU	Office of Zoning

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STAFF PRESENT: (CONT.)

JOHN FONDERSMITH	Office of Planning
MAXINE BROWN-ROBERTS	Office of Planning
KAREN THOMAS	Office of Planning
DAVID McGHETTIGAN	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

MARIE SANSONE, ESQ.

AGENDA ITEM

PRELIMINARY MATTERS 7, 75, 125

APPLICATION OF JBG/JER 13TH & N, LLC:16871 ANF-2F 8

CYNTHIA A. GIORDANO, ESQ.
 Linowes and Blocher
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 Suite 302
 Washington, D.C. 20036
 (202) 293-8510
 FAX: (202) 293-8513

WITNESS

STEWART BARTLEY 19, 28
 CHRIS TODD 26
 DANNY ADAMS 36
 NATHAN GROSS 39
 ROBERT SOCKWELL 43

OFFICE OF PLANNING 46APPLICATION OF INGLESIDE AT ROCK CREEK:16861 ANC-3G 74

ALLISON C. PRINCE, ESQ.
 Shaw, Pittman, Potts & Trowbridge
 2300 N Street, N.W.
 Washington, D.C. 20037

WITNESS

PETER HECK 80
 ANNE MOHNKERN RENSHAW (Recused) 101
 JANE ANGUS 113

OFFICE OF PLANNING 90

AGENDA ITEMAPPLICATION OF METROPOLIS DEVELOPMENT COMPANY, LLC:

16832 ANC-1B126

RICHARD B. NETTLER, ESQ.
 Robins, Kaplan, Miller & Ciresi
 Suite 1200
 1801 K Street, N.W.
 Washington, D.C. 20006
 (202) 775-0725
 FAX: (202) 223-8604

WITNESS

SCOTT PANNICK128

ROBERT SPONSELLER132

MICHAEL WORKOSKY166

OFFICE OF PLANNING179DISTRICT DIVISION OF TRANSPORTATION183APPLICATION OF KINGS CREEK, LLC:16869 ANC 1C209

JONATHAN L. FARMER, ESQ.
 Wilkes, Artis, Chartered
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 Suite 300
 Washington, D.C. 20006-2897
 (202) 457-7800
 FAX: (202) 457-7814

WITNESS

DOMINIQUE KOSTELAC212

GREGORY KEARLEY214

DARNELL BRADFORD-EL277

OFFICE OF PLANNING267**NEAL R. GROSS**

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P-R-O-C-E-E-D-I-N-G-S

9:36 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I will call this hearing to order. This is, of course, the April 30, 2002 Board of Zoning Adjustment of the District of Columbia Public Hearing, and with that, we're official.

My name is Geoff Griffis. I am Chairperson today.

Joining me is Vice Chair, Ms. Anne Renshaw, Curtis Etherly is on my right, and representing the National Capitol Planning Commission is Mr. David Levy, and representing the Zoning Commission is Ms. Carol Mitten.

Copies of today's hearing are available for you. They are located on the table next to the door that you entered into. Please be aware that the proceedings are being recorded, and so we will have a few things to discuss on that one. Technically, we'll walk you through.

In order to be on the record, you must be speaking into the microphone. The microphone must be on. We also ask, of course, that disruptive noises and actions in the hearing room be kept to a bare minimum, and I don't anticipate any of that today.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. The witness cards are also at the table where you entered into, and there are some in the table right in front.

1 Upon coming forward to speak to the Board, you can
2 give both copies to the recorder, who is sitting to the right.

3 The order of procedure for the special exceptions
4 and variances today, will be first, statement of the witnesses -
5 statement and witnesses of the applicant; second, would be
6 government reports, including Office of Planning and any others
7 that were submitted in the application; third, will be the report
8 of the Advisory Neighborhood Commission, and fourth, would be
9 parties or persons in support; fifth, would be parties or persons
10 in opposition, and sixth, we will have closing remarks by the
11 applicant.

12 Cross-examination of the witness is permitted by
13 the applicant or parties. The ANC within which the property is
14 located is automatically a party in the case.

15 The record will be closed at the conclusion of each
16 case except for any materials specifically requested by the
17 Board, and we will be very specific as to what we would expect
18 and when we would expect it to be submitted into the Office of
19 Zoning.

20 After the record is closed, no other information
21 will be accepted by the Board. The Sunshine Act requires that
22 the public hearing on each case be held in the open and before
23 the public.

24 The Board may, however, consistent with the Rules
25 of Procedure and the Sunshine Act enter executive session during

1 or after the public hearing on a case for purposes of reviewing
2 the record or deliberating on the case.

3 The decision of the Board in these contested cases
4 must be based exclusively on the public record, and to avoid any
5 appearance to the contrary, we, of course, request that persons
6 present not engage members of the Board in conversation.

7 Let me ask everybody to turn off their cell phones
8 and beepers at this time and any other satellite-communicative
9 devices, so that we don't have any other disruptions in the
10 hearing today, and I think we can move onto any preliminary
11 matters.

12 Preliminary matters are, of course, those that
13 relate to whether a case will or should be heard today, such as
14 request for a postponement, continuance or withdrawal but where
15 the proper and adequate notice of the hearing has been given.

16 If you are not prepared to go forward with a case
17 today or if you believe that the Board should not proceed, now is
18 the time to raise such a matter. I will first ask Staff if they
19 have any preliminary matters for the Board this morning.

20 SECRETARY BAILEY: No, Mr. Chairman, we do not.

21 CHAIRPERSON GRIFFIS: Thank you, Ms. Bailey, and
22 good morning to you.

23 SECRETARY BAILEY: Good morning.

24 CHAIRPERSON GRIFFIS: Does anyone else have
25 preliminary matters to attend to in any of the applications this

1 morning? Not seeing any positive response to that, I think we
2 can call the first case.

3 SECRETARY BAILEY: Application Number 16871 of
4 JBG/JER 13th and N, LLC, pursuant to 11 DCMR 3103.2 for a variance
5 from the rear yard requirements under section 404 for the
6 construction of a new apartment house in the R-5-E District of
7 premises 1300 N Street Northwest, Square 244, Lot 30.

8 All those persons wishing to testify, please stand
9 to take the oath.

10 Do you solemnly swear or affirm that the testimony
11 you are about to give in this proceeding will be the truth, the
12 whole truth and nothing but the truth?

13 All WITNESSES: I do.

14 CHAIRPERSON GRIFFIS: Good morning.

15 MS. GIORDANO: Good morning, Mr. Chair, Members of
16 the Board. We come to you this morning with hat in hand. We
17 have a case for a variance from a rear yard requirement. I'm
18 representing the JBG Companies in this matter, and I'll introduce
19 our team and our witnesses in a moment.

20 I'd just to like make some brief introductory
21 remarks. I say that we come with hat in hand because, we're here
22 because we need some immediate relief from the zoning regulations
23 in order for a very worthwhile project, a residential apartment
24 building in Southern Logan Circle to proceed on a timely basis.

25 The genesis for this variance is that there were a

1 number of errors made about the zoning requirements with regard
2 to the subject property, and I'm really starting with our own
3 team.

4 The property was the subject of a re-zoning from
5 SP-2 to R-5-E a number of years ago, and when the planning and
6 design of this project was initiated, it was still SP-2.

7 An SP-2 zone allows for a courtyard to be provided
8 in lieu of a rear yard for a project, like ours. We started the
9 design of the project with that in mind, and when the property
10 was re-zoned, although we were aware of the re-zoning, we were
11 not aware initially that that option of a courtyard in lieu of a
12 rear yard did not carry over with the R-5-E zoning, because most
13 of the zoning standards for the SP-2 and the R-5-E, as far as
14 height and bulk are identical.

15 So, we went through the normal review process. Our
16 firm, in fact, facilitated an initial meeting with the zoning
17 administrator where we reviewed the project design, and it was
18 clear that there was a courtyard provided in lieu of a rear yard,
19 and we all missed the fact that that was no longer a provision in
20 the R-5-E zone, and so I say ourselves included, the architect
21 and the zoning administrator, went ahead and proceeded to file
22 for the building permit, and we received a zoning sign-off even
23 though it was clear on the face of the plans that we were
24 providing courtyard, and we weren't providing a rear yard.

25 It wasn't until our firm was asked to provide a

1 zoning opinion in connection with a large refinancing on behalf
2 of our client, this project was just one of a number of
3 properties that were included in that refinancing that we had to
4 go and certify that the project, the proposed project complied
5 with zoning, and then we did a very systematic review of all the
6 requirements and caught this error.

7 CHAIRPERSON GRIFFIS: What was the date on the
8 certification?

9 MS. GIORDANO: You mean our zoning opinion?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. GIORDANO: We didn't actually conclude that-

12 CHAIRPERSON GRIFFIS: You didn't-

13 MS. GIORDANO: -zoning opinion. We couldn't sign it
14 because it was late February, early March-

15 CHAIRPERSON GRIFFIS: Of-

16 MS. GIORDANO: As soon as-

17 CHAIRPERSON GRIFFIS: This year?

18 MS. GIORDANO: This year, right. As soon as the
19 mistake became apparent, we brought it to our client's attention,
20 and we filed this variance application within three days of
21 determining that, indeed, there was a mistake there.

22 At the same time, we quickly consulted with our
23 neighboring property owners to see whether they would be
24 supportive of the variance and the proposed designs of the
25 courtyard, and we felt that they clearly would be, because the

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1 courtyard design really has a number of advantages for light and
2 air purposes, which, of course, is the purpose of a rear yard
3 variance, but it's - the configuration of this open space in the
4 courtyard really benefits the neighboring properties more than a
5 standard rear yard setback.

6 So, we were pleased to learn that they preferred
7 the proposed design with the courtyard, and we proceeded with
8 consultations with the ANC. We received their support. We
9 consulted with the Office of Planning and learned that they
10 preferred the courtyard design.

11 So, we're happy to say that although this error has
12 caused a lot of problems for the developer and the applicant in
13 terms of increased costs and Mr. Bartley, from the JBG Companies,
14 will go into that in a moment in his testimony, and of course,
15 throwing a major monkey wrench in this whole refinancing effort,
16 which we were able to resolve by concluding that we could
17 ultimately build the building either way, but of course, if we
18 were to go back and provide a rear yard set back, there would be
19 a major delay in the construction of the project.

20 There would be a major redesign effort, and while
21 that could happen, it would be a significant practical difficulty
22 and a hardship on the applicant at this time, and in a sense our
23 misfortune here is the fortune of others, because although we
24 would probably would not have set out to design the building this
25 way, if we knew we needed a variance, there simply wasn't time in

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1 the schedule for this - what we thought was a matter of right
2 project to come to the BZA.

3 We would've designed it with the rear yard setback
4 if we had known it was required, but fortunately, because we
5 thought the courtyard was required, I think we - was permitted,
6 we have a better design, one that our neighbors like better, and
7 it's going to be better, actually, for the occupants of this
8 building as well.

9 So, hopefully, there will be a happy ending here,
10 but we need the approval of the Board to proceed on schedule, and
11 provided that there's no opposition at this hearing, which we
12 don't expect there to be, we're going to ask the Board for a
13 bench decision in our closing remarks.

14 So, at this point, I'd like to proceed with the
15 case, unless there are any questions of me.

16 We have two witnesses from the JBG Companies, Mr.
17 Stewart Bartley and Andrew Gutowski. Then, we're going to
18 proceed with the architect, Danny Adams from RTKL Associates, and
19 Nate Gross from Arnold and Porter will provide some background on
20 the zoning change, and the purposes of the zoning and testify to
21 the fact that this variance will not impair the zone plan or the
22 intent of the existing zoning.

23 So, unless there are questions, we'll go ahead and
24 proceed with Mr. Bartley.

25 CHAIRPERSON GRIFFIS: One quick thing. First of

1 all, as your submission actually points out, the Board did look
2 at something of a similar nature in the general area, and I think
3 first of all, just to say, the changes of the zoning was a long
4 process.

5 It was very involved, and I think - well, what I
6 think the Board would like to see is a breakdown, and I'm not
7 sure if you were going to do that, or your witnesses can do that,
8 but a breakdown, a little bit more detail of the chronology, a
9 little bit more specificity in terms of what kind of due
10 diligence was pursued in terms of the zoning, and then I think we
11 can go from that point.

12 I - there were obviously some strong words in some
13 of the opinions of ANC and some of the other letters in here.
14 Frankly, leveling some blame on the Office of Zoning, if I'm not
15 mistaken in terms of why the public wasn't aware of the zoning
16 change and not that I work for the Office of Zoning, but
17 obviously, here I am on the BZA. I just want to lay out more of
18 a common - well, I don't know-

19 MS. GIORDANO: Can I just make a comment-

20 CHAIRPERSON GRIFFIS: Let me just finish while I
21 have this train of thought. I think there is a difficulty in
22 terms of how one educates the entire city of any sort of zoning
23 changes that happen or don't happen.

24 I don't think there's a vehicle for that, and I
25 think it is incumbent on a developer and the architect and

1 designers to be aware of those changes.

2 In the reality and the practical side, it's very
3 difficult. Obviously, in the beginnings of a design phase,
4 you're going to do your zoning analysis, and then you're going to
5 go on and put your documents together and move onto it.

6 I guess why I'm bringing this up is, one, we're
7 hoping that this is the last of any cases we see of this nature;
8 two, I don't think that what we do here today and I'm not sure
9 what we'll do, but I don't think it will translate into any other
10 projects or any other areas.

11 So, I want to be decided and pointed in terms of
12 what we're looking at here, and really getting to the root of how
13 we got to this and how we can move on from it. I think - well,
14 there it is. We'll get into further information, unless other
15 board members have questions, comments-

16 MEMBER LEVY: Actually, just a quick comment. I
17 don't believe the applicant's counsel has identified herself for
18 the record.

19 MS. GIORDANO: Oh, I'm sorry. Cynthia Giordano from
20 Arnold and Porter law firm.

21 CHAIRPERSON GRIFFIS: Yes.

22 MS. GIORDANO: I just wanted to say that our case is
23 different than the Bundy case in that we are not laying the blame
24 totally on the zoning administrator's doorstep. We are here to
25 say that, you know, we made mistakes; we started this chain of

1 mistakes-

2 CHAIRPERSON GRIFFIS: Right.

3 MS. GIORDANO: -and unfortunately, they didn't catch
4 it. We wish they had, but our situation is different than that,
5 so we are not documenting errors by the City. We are here to say
6 that we made a mistake, as well, and we do have permits.

7 We have footings to grade permits and excavation
8 permits that were issued by the City. We had a zoning approval
9 on the basis of the courtyard instead of the rear yard.

10 So, the City made some mistakes, but it's different
11 than that case, in that we're not really blaming the City here.
12 We're saying that, you know, we wish that they had caught our
13 mistake-

14 CHAIRPERSON GRIFFIS: Right.

15 MS. GIORDANO: -and-

16 CHAIRPERSON GRIFFIS: I guess that's my point is I
17 don't want to get into the whole blame issue-

18 MS. GIORDANO: Right.

19 CHAIRPERSON GRIFFIS: -I mean, let's get to the
20 substance and let's figure out what is actually in front of us,
21 and hopefully we - this may lead to a larger picture of a cure
22 for announcing zoning. Maybe we can get like a billboard truck
23 that drives through town and says your neighborhood has been re-
24 zoned-

25 [Laughter.]

1 But in any case, I don't want to spend a lot of
2 time on that.

3 COMMISSIONER MITTEN: I just wanted to ask one
4 clarifying question, which I had a different understanding from
5 reading the information than what you just said in your opening,
6 which is I thought there was a misunderstanding about what the
7 zoning was-

8 MS. GIORDANO: I think the City - there was an
9 indication on the permit that there was the SP zoning was in the
10 blank where they fill in the zoning-

11 COMMISSIONER MITTEN: Okay.

12 MS. GIORDANO: -and then it was crossed out and
13 later R-5-E - we don't know when it was crossed out, but I think
14 initially they were - the reviewer, at least, was mistaken as to
15 what the zoning was.

16 COMMISSIONER MITTEN: Okay.

17 MS. GIORDANO: But that's not the sole problem.

18 COMMISSIONER MITTEN: What I got from what you said
19 was that it was really not the same kind of confusion from the
20 Bundy case, which is what is the zoning-

21 MS. GIORDANO: Exactly.

22 COMMISSIONER MITTEN: -it was a misunderstanding
23 about one provision of R-5-E that was misunderstood.

24 MS. GIORDANO: Right. In the meeting with the
25 zoning administrator, I think that it was clear what the zoning

1 was, but when the application was reviewed by another person in
2 the zoning office, I think in that case, there was a
3 misunderstanding as to what the zoning was.

4 COMMISSIONER MITTEN: Thank you.

5 CHAIRPERSON GRIFFIS: Okay. Any other questions at
6 this point? You're going to call-

7 MS. GIORDANO: Mr. Bartley and Mr. Gutowski from-

8 CHAIRPERSON GRIFFIS: Okay, and while they're
9 getting organized, I just want to acknowledge that Mr. Sockwell
10 is here, past-Chair of the BZA, and we welcome you this morning.

11 MR. SOCKWELL: Thank you.

12 CHAIRPERSON GRIFFIS: Hopefully, you're not doing a
13 critique analysis of our operations.

14 MR. SOCKWELL: No, not really.

15 CHAIRPERSON GRIFFIS: However, we'll check your
16 notes at the door. Are you here testifying in the case today,
17 or-

18 MR. SOCKWELL: No, I'm not.

19 CHAIRPERSON GRIFFIS: Okay. Well, welcome.

20 MR. BARTLEY: Good morning, Mr. Chairman-

21 CHAIRPERSON GRIFFIS: Good morning.

22 MR. BARTLEY: -Members of the Board. I'm Stewart
23 Bartley, managing director of JBG Residential. To my right is
24 Andrew Gutowski, who is the project manager for Sovereign Circle,
25 which is the project we're here before you today.

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1 I think our counsel covered a lot of my testimony.

2 I will start out by reiterating our counsel's answer to the
3 Chairman's question. We certainly do feel like there is plenty
4 of blame here, and that's not really what we're here about.

5 And I also want to clarify for Ms. Mitten that our
6 firm definitely did understand what the zoning was at the time
7 we purchased the property and at the time we were planning the
8 property, but it was, indeed, a misunderstanding about this one
9 provision that relates to corner lots and provisions of
10 courtyards versus rear yard setbacks for corner lots.

11 We do believe that, though, the net result is a
12 better result, and we are very hopeful that the Board will agree
13 with that assessment today.

14 First, a little bit about JBG, as many of you may
15 know, we're a locally owned and operated real estate investment
16 and development firm that has been active in the metro area for
17 40-plus years.

18 We're active in all sectors of real estate in the
19 Washington area and most of the jurisdictions in the metro area.

20 We have a very, very strong commitment to developing and owning
21 properties in the District of Columbia.

22 Our residential division currently has seven sites
23 for residential development in and around the downtown. We
24 consider this to be a downtown-oriented project, even though it's
25 not in the strict definition of downtown.

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1 Those seven projects represent some 1,200
2 residential units, all of which we hope to be under construction
3 during this year of 2002.

4 Our goal is to certainly to deliver the best
5 possible product, the best possible price in order to contribute
6 to the strengthening of the living downtown.

7 Contrary to some of my colleagues' belief, and as
8 our counsel alluded to earlier, it is certainly not our goal to
9 come before the BZA on each and every project that we do, and we
10 certainly do come hat in hand today.

11 We do pride ourselves on being able to understand
12 the various rules and regulations that govern what we do, and yet
13 we are especially disappointed and many other emotions to be here
14 under these circumstances, but again, we hope you all agree
15 that our case and merits have an affirmative result.

16 As our counsel indicated, what we're here today is
17 to ask for relief from the rear yard setback. Again, the cause
18 of this misunderstanding, our team designed a building that
19 provides a courtyard in lieu of a rear yard setback. It's a
20 substantially larger courtyard, I might add, than that which was
21 provided for under the old SP-2 zoning.

22 As best we can tell, the current zoning regulation
23 for R-5-E are silent on the unique characteristics of corner lots
24 with respect to setbacks in courtyards.

25 As Ms. Giordano indicated, we do - we will be

1 asking for a bench decision today, because as she indicated, the
2 project is well under construction. We are currently at the
3 bottom of the hole and are pouring foundations.

4 We have already incurred substantial expense to
5 make contingency plans, because we're certainly not so
6 presumptuous to assume that you would grant us this relief, but
7 we do have people in the field who need immediate direction as to
8 which way to go.

9 The project, as our architects will describe in
10 more detail, is a 170-unit loft style residential building with
11 two levels of underground parking. We'll use the model here to
12 orient everyone.

13 It is located at the corner - the southwest corner
14 of 13th and N. It's directly across the street from the recently
15 completed or nearly completed Solo Piazza Condominiums which are
16 sliding down into the middle of 13th Street on our model.

17 Immediately to our west is the Crescent Towers
18 Condominium, to the south the Sutton Plaza Apartments.

19 CHAIRPERSON GRIFFIS: Just to reorient the Board in
20 case we're missing - 13th Street is running left and right.

21 MR. BARTLEY: Yes, and this would be north towards
22 Logan Circle in my direction. Andrew, perhaps you could point
23 out the Crescent Towers Condominium and Sutton Plaza Apartments
24 which are neighbors that we felt like we were the most
25 immediately affected by this issue.

1 I think - a little bit of the history and
2 chronology of the site is certainly warranted as an earlier
3 question indicated.

4 We contracted to purchase this site in late 1999.
5 It was at that time still zoned SP-2, but we were aware that it
6 was in the process of being re-zoned R-5-E, although that re-
7 zoning had not been completed at the time that we contracted to
8 purchase the site.

9 We immediately began planning the site at that
10 time, and the early design studies studied a number of
11 configurations on the site.

12 In March of 2001, we settled on the configuration,
13 more or less, that is the configuration that is as designed and
14 presented for our permits.

15 Again, at that time, making a determination that
16 the courtyard would not only be a by-right element, mistakenly,
17 but that the courtyard design would provide a better design, not
18 only for our residents, but for our neighbors.

19 One thing that we try to do particularly is
20 maximize the light and air onto our sites. We don't always have
21 that opportunity in the more urban mid-block sites and downtown,
22 so we really tried to emphasize that point.

23 The balance of 2000 was spent finalizing the design
24 of the building. You can see that the building - most of the
25 building is massed on 13th and N Streets, on the street frontages,

1 and there is a carriage house element, if we can continue
2 rotating the design around, the model around. There's a carriage
3 house element located in the courtyard area; it's a low-rise
4 structure.

5 It was originally envisioned to be a detached
6 building and one that would house the amenities as well as some
7 apartment units. We thought that would lend some additional
8 design character, and again-

9 CHAIRPERSON GRIFFIS: How'd you get that Styrofoam
10 so thin on that room-

11 MR. BARTLEY: Yes, that's a question of the
12 architects, I will have to admit.

13 So, again, the design was finalized during the
14 balance of 2000. Plans were submitted to the City for the
15 permitting in January of 2001. We received our first comments
16 back - and again, they were submitted, and there were some
17 initial meetings with under the Ambassador Program to bring all
18 the parties together to review the initial design.

19 We received comments back - first set of comments
20 back in March of 2001, and in the spring of 2001, we basically
21 underwent a fairly extensive redesign of the courtyard element,
22 the carriage house element that is central to the point in
23 question.

24 CHAIRPERSON GRIFFIS: Let me interrupt you.

25 MR. BARTLEY: Yes.

1 CHAIRPERSON GRIFFIS: I'm sorry, but on March of
2 2001, you had permit comments back; were there any zoning
3 comments?

4 MR. BARTLEY: Yes. The zoning comments were to this
5 point of the redesign. We were told that we had to connect the-

6 CHAIRPERSON GRIFFIS: Right.

7 MR. BARTLEY: -carriage house to the main structure
8 and that we could not - we could not have the two separate uses
9 being the amenities on the first level, which was our original
10 plan. It all had to be one use.

11 So, we responded to those comments. I don't know
12 if those were exclusively zoning comments. We have Chris Todd
13 here who may be able to clarify that-

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. BARTLEY: -at that point. We - so, we underwent
16 this major redesign - I'm sorry, this is Chris Todd, who is the
17 construction manager for this project. He's with the JBG
18 Companies. Chris, do you want to clarify that point about the
19 question about-

20 MR. TODD: I would, thank you. I'm Chris Todd with
21 the JBG Companies. Our first set of review comments were a full
22 set of review comments from the City agencies. The only comments
23 that we did not receive at that time were from the elevator
24 reviewer. One of the comments specifically dealing with the
25 carriage house was from the zoning reviewer, who said that we

1 were not allowed to have two separate buildings on one lot of
2 record.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. TODD: So, we connected those two buildings. We
5 also were given the comment that any accessory uses to the
6 primary use of the site, which is residential had to be housed
7 within THE major part of the building, and that was an
8 interpretation.

9 What that meant was that rather than having all of
10 our amenity spaces within the first level of the carriage house
11 portion of the structure, we moved that into the base of the main
12 90-foot section, and that's how we-

13 CHAIRPERSON GRIFFIS: What were those uses?

14 MR. TODD: We have a couple of different uses; we
15 have an exercise room for the use of our residents; we also have
16 a community room, which is used for meetings and parties. It has
17 a small kitchen plus-

18 CHAIRPERSON GRIFFIS: Interesting.

19 MR. TODD: -function areas.

20 CHAIRPERSON GRIFFIS: Okay. Well, it doesn't have
21 anything to do with us today, but-

22 MR. TODD: It doesn't, but there was actually
23 specific-

24 CHAIRPERSON GRIFFIS: Right.

25 MR. TODD: -review and comment on this design as it

1 was presented, as a carriage house-

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. TODD: -with a large building and with a
4 courtyard in lieu of the rear yard.

5 MR. BARTLEY: Okay, if I may continue then the
6 chronology. We submitted the - thank you, Chris - the redesign
7 plans in May of 2001. Zoning signed off on September 24th of
8 2001. We received an excavation and sheeting and shoring permit
9 on December 12th of 2001 and began construction shortly
10 thereafter.

11 As our counsel indicated, we discovered the error -
12 we only discovered it during a zoning certification that was
13 being required due to a refinancing of not only this project but
14 three of our other downtown D.C. deals.

15 We discovered that on - I'm not sure of the exact
16 date, very early March, and I believe we met that same day-

17 MS. GIORDANO: Yes, I think we met at JBG's offices
18 on Friday in early March and we all sat around the table and
19 basically accepted that there - we had a problem, and we filed
20 the variance application the following Tuesday, which was the 6th
21 of March.

22 MR. BARTLEY: So, we then, as Ms. Giordano indicated
23 earlier, we immediately began meeting with our neighbors. Our
24 first up was with the Crescent Towers Condominium, our immediate
25 neighbor to the west.

1 We already had developed a good working
2 relationship with them, we felt like because we haven't - we're
3 under-painting their building, and so we have had extensive
4 discussions with them.

5 They certainly prefer the courtyard design, and I
6 believe they submitted a letter to that effect. We met with
7 again a number of the other neighbors, the owner of Sutton Plaza
8 Apartments, the Solo Piazza Condominiums, ANC 2-F, the Logan
9 Circle Community Association, and I believe you have a letter
10 from Jack Evans-

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. BARTLEY: -his office as well.

13 CHAIRPERSON GRIFFIS: All in there.

14 MR. BARTLEY: I'd like to talk a little bit about
15 the alternatives. Let me first - it's important to note that the
16 design that was submitted for approval, we did not get any
17 density height or other advantage.

18 We did not seek to gain any and certainly did not
19 receive any, but it was really a matter, again, of maximizing air
20 and light onto our building and trying to build a nice urban
21 street scape onto both 13th and N Streets.

22 CHAIRPERSON GRIFFIS: Let me interrupt you just-

23 MR. BARTLEY: Yes.

24 CHAIRPERSON GRIFFIS: -quickly, because I know the
25 record in this submission makes a very strong case to the fact

1 that, as you're speaking to, the density, the height, the bulk of
2 the building is similar in the two zones, the SP and the R-5, and
3 that there's nothing that's changed, except for what you're
4 dealing with, the rear yard.

5 My question is on the drawings that were submitted
6 originally, the permit, there was a zoning designation on the
7 cover sheet, was there not?

8 MR. BARTLEY: Yes.

9 CHAIRPERSON GRIFFIS: And what it?

10 MR. BARTLEY: R-5-E. It - that zoning tabulation
11 did clearly indicate that we were providing a rear - a courtyard,
12 I should say, in lieu of rear yard setbacks.

13 CHAIRPERSON GRIFFIS: Right. Well, it's fascinating
14 because it goes back to what I kind of perhaps not very
15 articulately was saying in the beginning but that the impression
16 from some of the letters that we had in was that the fact that we
17 - that somebody in the City didn't make aware of the zoning
18 change, and as you stated you knew about it all along.

19 MR. BARTLEY: Yes, no, let me be very clear about
20 that. We knew about the R-5-E, again it was just the
21 interpretation of this provision of relating to corner lots or
22 the lack of this provision in R-5-E.

23 CHAIRPERSON GRIFFIS: Right, indeed.

24 MR. BARTLEY: The site does have some other unique
25 characteristics, though, that I think are important to take into

1 consideration. It does to the south - is bordered by an alley,
2 which does effectively provide a setback between our building and
3 Sutton Plaza Apartments at the street entrance, and it is - the
4 Crescent Towers - the driveway into their parking garage is
5 immediately to our west; again, effectively providing a setback
6 on that side.

7 Again, one of the interesting points about a corner
8 lot is we don't know which - you know, which side is our rear
9 yard, and to that point, we do have as the Chairman noted, some
10 thin cuts in our model, and what we'd like to do is demonstrate
11 what - at least one of the most likely alternatives would be if
12 we needed to provide to the strict letter of the rear yard
13 setback.

14 In order to provide for the same 170 housing units
15 on site, we'd have to replace the carriage house with a high-rise
16 element that goes to the height limit.

17 That, again, severely impacts the views from
18 Crescent Towers coming into our courtyard. It actually
19 eliminates their views into our courtyard, and in our opinion
20 provides a much less desirable courtyard, not only for our
21 residents but for Sutton Plaza to look into.

22 A, I think, worse result from our standpoint would
23 be if we - then if you can just sort of move that element over
24 about 15 feet or 10 feet - would be to make an even smaller
25 courtyard on our site.

1 You would have to imagine that that - well, don't
2 have to imagine it, just put it back on there, with that element,
3 we're still there. That, in our opinion, would probably be the
4 worst of all worlds, not only for our neighbors, the Crescent
5 Towers, but for our residents.

6 Unfortunately, I'm told at this stage of the game,
7 that may be the more technically feasible. As I've indicated, we
8 have - I just hope not to have to make that choice. The - so
9 those are those as we see them, and now at this stage of the
10 game, they're sort of the practical alternatives.

11 As I indicated earlier, we've not been so
12 presumptuous to think - you know, to assume that you will grant
13 us this relief, so we've been making some contingency plans in
14 the foundation work.

15 One way or another we're going to have the
16 strongest foundation at the intersections of 13th and N Streets as
17 we strengthened it, I'm told that's expensive, approximately
18 \$200,000. Again, we can mitigate some of that cost, if we're -
19 if you're so inclined to make a decision on this point today.

20 CHAIRPERSON GRIFFIS: Let me just call the Board's
21 attention, and I want to actually compliment on the submissions
22 that were done. We have copies of what you're showing in the
23 model form, and-

24 MR. BARTLEY: Yes-

25 CHAIRPERSON GRIFFIS: -it actually also has sun

1 studies, and if you turn your pages fast, it's really
2 fascinating, but that's more for us. So, anyway, no I appreciate
3 doing that, and I think it is fairly clear on what's happening
4 here.

5 Going to the quick point you say it's technically
6 feasible, based on where your foundation is going, that's the
7 alternative that you basically have, because there could be
8 others, correct? I mean, you could flip the garage entrance
9 along-

10 MR. BARTLEY: Yes, we're really too far along in the
11 design phase-

12 CHAIRPERSON GRIFFIS: Right.

13 MR. BARTLEY: -and - one of the practical
14 difficulties and hardships is certainly the time it would take to
15 redesign any redesign, and so we would certainly want to minimize
16 the impact on the design that's already in place, as I think, if
17 you - you may have noted from the chronology, it takes a long
18 time to design these buildings, longer than I - you know, I wish
19 it did.

20 CHAIRPERSON GRIFFIS: Yes, but it's well worth the
21 time.

22 MR. BARTLEY: Yes, it is worth the time if you end
23 up with a nice product at the end, but again, I think that those
24 two alternatives are probably at this point the practical
25 choices-

1 CHAIRPERSON GRIFFIS: Right.

2 MR. BARTLEY: Again, if we were starting with a
3 clean sheet of paper, going to back to my opening remarks, it's
4 certainly not my objective to be here before the BZA on each and
5 every project, and we certainly felt like that this one, we had
6 covered all the bases, and we had a by-right design and we - we
7 spent a lot of time and effort up front evaluating alternative
8 designs on all of our projects, and really tried to make an
9 effort to work within the zoning regulations, as much as
10 possible.

11 So, with that, I should probably turn it over to
12 the architects unless there are any other questions.

13 Again, I just want to emphasize that the delay that
14 we will experience is probably a matter of many months, and
15 again, that would not only be very bad for us, for the
16 refinancing that we have alluded to, but we think also for the
17 neighbors and for the City to have that hole sit there for any
18 longer than - in its existing state than necessary.

19 So, thank you for your time, Mr. Chairperson.

20 MEMBER ETHERLY: Pardon me for interrupting, I'm
21 sorry. I just wanted to be sure I was clear. The Chairman
22 inquired about what the zoning designation was on the drawings
23 that were submitted. I just wanted to clarify where - the R
24 designation was on the first set or the spring set.

25 MR. BARTLEY: I believe they're on all sets. Let me

1 just-

2 MEMBER ETHERLY: Okay. So, dating back to March
3 2001?

4 MR. BARTLEY: Yes.

5 MEMBER ETHERLY: Okay. Thank you.

6 MR. BARTLEY: Or January of 2001, I believe-

7 MEMBER ETHERLY: Okay.

8 MR. BARTLEY: -was when we made our first
9 submission.

10 MEMBER ETHERLY: Okay. Thank you.

11 CHAIRPERSON GRIFFIS: Any other questions?

12 MS. GIORDANO: I'll call Danny Adams from RTKL
13 Associates to present the project.

14 MR. ADAMS: Good morning. My name is Danny Adams.
15 I'm the project architect for this project with RTKL Associates
16 located here in Washington. Mr. Bartley and Ms. Giordano have
17 gone through some level of detail the current state of the
18 project, as currently designed.

19 I was going to spend some time going into a little
20 more detail about why we pursued more specifically the specific
21 bulk and massing of the design that we have. If I can
22 reconfigure this model here.

23 CHAIRPERSON GRIFFIS: Let me - while you get
24 organized, ask the Board how much they need to go into this
25 design.

1 I think, first of all, the submissions, drawings,
2 models and everything help us tremendously, and I, again, would
3 compliment you on that. It also makes us more expeditious in
4 time.

5 So, I'm not sure we need to walk through an extreme
6 amount, unless anyone else - I would say if you wanted just to
7 summarize the massing, because we've kind of touched on it, and
8 then take questions from the Board would be more appropriate.

9 MR. ADAMS: Sure. Our intent, originally, was to
10 strengthen the integrity of the street walls, both along 13th and
11 N Streets with a 90-foot mass along those two streets, and use
12 the carriage house as more or less a jewel little element that
13 sat at a lower height behind the L-shape of the main building.

14 We knew all along that because of the small size of
15 this carriage house that it would be looked down upon as a small
16 little jewel - it's got a very nice roof and materials, the brick
17 and the metal panel on the roof, as you can see, and it was also
18 an attempt to give maximum light to the courtyard that we have
19 provided behind the building and to allow the maximum amount of
20 light for the two adjacent property buildings.

21 So, more or less, that's in a nutshell where we are
22 with the massing today.

23 CHAIRPERSON GRIFFIS: Great, thank you. And again,
24 I'd call the Board's attention to the submissions and actually,
25 we have new - of today, of similar piece of the color going to

1 the site plan.

2 My first question is in terms of function and
3 programming. In the elevations that we have, there's a gate that
4 separates the rear alley from the courtyard, and it looks like
5 it's several feet off the ground. Is there direct access
6 walking?

7 MR. ADAMS: Yes, if I can - in the back of the
8 building, our courtyard is set down at a cellar level, which is
9 approximately six - five to six feet below grade-

10 CHAIRPERSON GRIFFIS: I see. So-

11 MR. ADAMS: -and-

12 CHAIRPERSON GRIFFIS: -it would just be the stairs
13 that would take you down into the courtyard?

14 MR. ADAMS: Right.

15 CHAIRPERSON GRIFFIS: Okay. And they would be -
16 they'd be secure, there's a door showing on that drawing that you
17 put up, not necessarily on the rendering, so that it's a private
18 courtyard-

19 MR. ADAMS: Correct.

20 CHAIRPERSON GRIFFIS: -not - you're not walking in
21 off the alley. Okay. Any other questions? Okay.

22 MR. ADAMS: Thank you.

23 MS. GIORDANO: Okay. We're ready to proceed with
24 Mr. Gross with planning background, planning testimony on the
25 case. We'll be brief.

1 MR. GROSS: Good morning, Mr. Chairman, Members of
2 the Board-

3 CHAIRPERSON GRIFFIS: Good morning.

4 MR. GROSS: I'm Nate Gross, city planner with Arnold
5 and Porter. The third part of the variance test is whether
6 there's any adverse effect, essentially on nearby yard properties
7 or the integrity of the zone plan.

8 The immediate effects on neighbors, I think, have
9 been pretty thoroughly gone in, too, that the courtyard actually
10 provides in many respects a better immediate environment for the
11 neighboring buildings and residents.

12 The integrity of the zone plan is highlighted by
13 the recent re-zoning case we've been referring to, namely Case
14 Number 97-7, which reviewed the map and text of the SP zones
15 around the perimeter of the central employment area, and one of
16 the main policy emphases of that case was re-zoning from mixed
17 use, namely the SP, which allows actually somewhat more than half
18 of the permitted density of the zone to be devoted to office
19 uses.

20 If you go from that mixture of uses, either
21 residential or office or a combination of the two, and all
22 residential zoning in places with established residential
23 character and so, areas like this, which went from SP-2 to R-5-E,
24 then we're going from mixed use to residential, and in that
25 regard, the proposed all residential building is fully in keeping

1 with recent city policy in the Logan Circle area.

2 The Office of Planning report on the case cited
3 several comprehensive plan policies, which I won't go into;
4 they're in the report - the Office of Planning report is very
5 eloquent in this regard as well.

6 I'd just mention that the OP rationale for making
7 residential a high priority use was in four parts.

8 One was reinforcing neighborhood character,
9 increasing population, providing additional consumer support for
10 retail and entertainment uses and tax base in the sense that the
11 residential buildings generate a high level of taxes when you add
12 the income taxes to the property taxes and the sales taxes.

13 And so, in general, we believe that the residential
14 buildings reinforces the integrity of the zone plan, and it is
15 completely compatible with neighborhood character, and I'll
16 conclude there.

17 CHAIRPERSON GRIFFIS: Great. Thank you very much,
18 and I think that's well said. Clearly, this doesn't go against
19 the zone plan. In fact, it's strictly coming up to it, and it
20 is, I think, an important addition to that avenue. Any questions
21 of Mr. Gross at this time? Okay, thank you very much.

22 MR. GROSS: Thank you.

23 MS. GIORDANO: Mr. Griffis, we have one other
24 witness, Mr. Sockwell, is here, and he was retained in December
25 to help with expediting and facilitating of the permit, and he

1 might be a good resource for any other questions the Board has on
2 how that process went, and he has a couple of comments if the
3 Board would like to hear them.

4 CHAIRPERSON GRIFFIS: Yes, that's fine.

5 MS. GIORDANO: Okay. If there's any concern about a
6 conflict, I think Mr. Sockwell can address that issue as well.

7 CHAIRPERSON GRIFFIS: No, it's not - I'm sorry to -
8 my note was just - I have a recall in the regulations a certain
9 amount of time to be-

10 MS. GIORDANO: Right, and he can address that.

11 CHAIRPERSON GRIFFIS: Okay, that's great, and then
12 were you sworn in?

13 MR. SOCKWELL: No, I was not.

14 CHAIRPERSON GRIFFIS: Okay. Why don't we have you
15 do that. Then we'll get to the formalities of getting you
16 approved to give testimony, and we'll move on.

17 MR. SOCKWELL: Should I step over to you?

18 CHAIRPERSON GRIFFIS: Right there's fine, I think.

19 SECRETARY BAILEY: Mr. Sockwell, do you solemnly
20 swear or affirm that the testimony you're about to give in this
21 proceeding will be the truth, the whole truth and nothing but the
22 truth?

23 MR. SOCKWELL: I do. Thank you, and I apologize; I
24 did not expect to make any statements before you this morning,
25 and I say good morning to you, Chairman Griffis and to Board

1 Members and Staff that I know so well.

2 I became involved with the project - yes - and
3 there is no conflict because I left the Board in March, on the
4 27th of 2001 was my last meeting, and one must be off the board
5 for a total of six months before-

6 CHAIRPERSON GRIFFIS: Right.

7 MR. SOCKWELL: -becoming involved with upcoming
8 cases coming before-

9 CHAIRPERSON GRIFFIS: Right.

10 MR. SOCKWELL: -the Board. So, I'm well beyond
11 that. I do miss it though.

12 [Laughter.]

13 Anyway, I became involved with the project on or
14 around December 4th of 2001, at which time, the project had
15 already been approved by Zoning on the permit application for the
16 base building, which was done, I believe, September 12th of 2001.

17 So, as part of what I do, I look at various issues
18 that might still revolve with regard to the permit that's being
19 processed. I chose not to look at the zoning issues, because the
20 zoning had already been signed off upon, and I saw no reason to
21 revisit it.

22 I did find some civil problems that were of
23 significance and some other issues that needed further
24 resolution, but traditionally, when preliminary permits for
25 excavation, sheeting, shoring and the foundation to grade

1 anything that's below the grade are issued, Zoning as a matter of
2 course will sign off on such without looking further at the
3 drawings.

4 And, therefore, the identification of this issue
5 lagged on, because those permits were issued with Zoning's full
6 approval, realizing that when the building doesn't project above
7 grade, it's not a zoning relationship, and the owner has full
8 responsibility for what he's building.

9 But, I feel that with regard to the application,
10 there was no reason, once I was involved with it, to see any of
11 the anomaly that occurred with regard to this court issue, and I
12 believe that it is one of those circumstances that can occur
13 during the traditional way that we process building permits in
14 the district.

15 There may be a need to change the approach to
16 preliminary permits, so that if anything like this does occur, it
17 can be caught before the building starts to come out of the
18 ground, and that would be where it may not be so much the fault
19 of the developer.

20 Regardless of any mistakes that were made, it is
21 certainly a loophole in the regulations and the application of
22 the permit process to new construction, especially where so much
23 money is involved and so much time and effort is involved.

24 MS. GIORDANO: Thank you very much.

25 CHAIRPERSON GRIFFIS: Thank you.

1 MR. SOCKWELL: Thank you very much.

2 MS. GIORDANO: And I think that clarifies also why
3 we have been building even after this zoning problem was
4 identified because those permits - there was no need to revoke
5 those permits-

6 CHAIRPERSON GRIFFIS: Right.

7 MS. GIORDANO: -they weren't-

8 CHAIRPERSON GRIFFIS: No, and I don't think the
9 Board has - obviously we haven't had a question, I don't think
10 there's a concern of that in terms of the progression. The base
11 understanding of the total time was what we were looking to have,
12 which I think we have found clarification on today. It's
13 certainly more clear than what we actually reviewed in the file.

14 Now, I'm assuming that you don't want to wait to
15 have the entire system changed in terms of the permitting and all
16 that for us to deliberate on this, so - but I think we have
17 opened up and Mr. Sockwell, it's well said, opened up a couple of
18 big issues in terms of the entire process of review and
19 permitting.

20 So, not being in charge of that, I think we can
21 move on.

22 MS. GIORDANO: That concludes our case in chief, and
23 I'd like to reserve the opportunity to make a closing statement
24 at the end.

25 CHAIRPERSON GRIFFIS: Good. Okay, let me just again

1 assess, we're at 10:30. Is anyone else here to testify on this
2 application today? Okay, not seeing any response, let us move
3 on, and I believe the Office of Planning is here - oh yes,
4 indeed, good morning sir.

5 MR. FONDERSMITH: Good morning, Mr. Chairman,
6 Members of the Board. I'm John Fondersmith to give the Office of
7 Planning report. In brief, we do recommend approve of variance
8 from the rear yard requirements to allow the construction of this
9 apartment house to go forward.

10 We have a little background in our report, which I
11 won't belabor, but just with the long effort to achieve housing
12 in downtown and on the edge of downtown, actually the downtown
13 housing concepts go back to the early '60's, and more recently in
14 the living downtown concept, we cited report from 1982, 20 years
15 ago, which really laid the basis for the present downtown plan,
16 adopted in '84, and later the downtown development district,
17 which the Zoning Commission passed in 1991, after extensive
18 hearings.

19 Those dealt mainly with housing in the downtown
20 areas and defined, which was north to M Street, and a great deal
21 of attention and work has been done on that, and it's begun
22 paying off.

23 This area, which is right north of downtown is now
24 defined Massachusetts Avenue, is really also very important for
25 residential development, and we've often said that some of these

1 areas, although - outside the downtown area, they really
2 functioned as part of this overall ring of residential areas that
3 are around the central employment area, which is a bigger
4 concept.

5 And has been mentioned already here in 1997, the
6 Zoning Commission began the process of re-zoning SP districts to
7 R-5-E, and there were some other changes in that case, but in
8 this - in the case of this development site, this area, there was
9 a re-zoning to R-5-E to get high density residential development
10 in this area, including the site that's before you today.

11 So, we can say that after really years - nearly
12 years of various planning and zoning efforts, we're very glad to
13 see the residential development going forward in this area. This
14 includes this project, and of course, the Solo Piazza project
15 across the street, which was just recently completed, and others
16 that we think will come.

17 It's an indication that the market conditions are
18 really ripe for this development, and of course, there's further
19 up - a couple of blocks further up 14th Street, there's other
20 development. This is going to be one of the most exciting areas,
21 really on the edge of downtown.

22 Then, we described the site, and you've gotten, I
23 think, enough probably on that, and the square. We do have in
24 the report the aerial photograph, which I think shows the area
25 quite well, although as we noted, since it's a '99 aerial

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1 photograph, it's a little out of date.

2 This site, which is under construction, there was a
3 building, the old funeral home on part of the site, and the Solo
4 Piazza building site now completed was a parking lot then.

5 So, change is occurring, and when you go out there,
6 you get a sense of that this is a convenient area for future
7 residents.

8 I think you've - we go through the building design,
9 but I think you've gotten that pretty much, especially this
10 relationship to the Sutton Plaza Apartments and to the Crescent
11 Tower Condos to the west, and then, of course, we note, again,
12 which the applicant has noted, the problem requiring a variance,
13 and we go through the tests here.

14 The applicant asserts that a series of errors
15 resulted in this need for the variance, and we agree that the
16 errors in this case do constitute an exceptional condition. The
17 applicant argues that strict application zoning regulations would
18 constitute exceptional hardship for the developer, and we think
19 that's clear.

20 I guess we're - and we're sympathetic to that, of
21 course, but I think we're more or just as much struck by the fact
22 that ironically, if the rear yard had been followed - had been
23 caught and followed, we would - I mean, the project would be
24 going forward with a less desirable design in terms of the street
25 wall along the 13th Street and the views of the residents in the

1 adjacent Crescent Towers Condominium, and so we think that even
2 if there were to be a design to say no, we're not going to make -
3 the Board were to say not to do a variance, to do a rear yard, it
4 would be costly, and it would also in design terms, it seems to
5 actually be counterproductive. It's an odd situation.

6 And finally, the applicant argues that this will
7 not cause substantial detriment to the public good or impair the
8 purpose of integrity of the zone plan, and we agree in this case.

9 First of all, of course, we'd like to see the
10 housing in this area move forward as rapidly as possible, and
11 furthermore, as I just said, we think this actually provides a
12 better design than to go back to the rear yard requirement.

13 The project is in conformance with the
14 comprehensive plan in terms of housing in this - financed the
15 housing in this area, and the idea of the ring of residential
16 neighborhoods around the central employment area; it's not only
17 downtown, but the whole central employment area.

18 And you'll - certainly, there has been a lot of
19 outreach to the community and response from the community. I
20 know you'll have the ANC letter and as mentioned, there's others,
21 both from community groups and from these adjacent property
22 owners, saying that they think this would be a better design in
23 terms of their buildings, especially Crescent Tower and the
24 Sutton Plaza Apartment to the south.

25 So, in summary, we recommend approval of the

1 requested variance from the rear yard requirement, which will
2 allow the existing - the building to continue as presently
3 designed.

4 And we just add, and this is outside of this
5 particular case, of course, but in light of this experience, in
6 this particular case, we think it might be useful, and obviously
7 we'd have to look at this a little bit more, but to suggest the
8 Zoning Commission consider, as I say, outside of this
9 application, the desirability of allowing more design flexibility
10 with respect to the rear yard requirement in the R-5-E district.

11 So, in summary, we do recommend that the Board
12 approve this variance. It's an unusual - it's an unusual
13 situation.

14 CHAIRPERSON GRIFFIS: Indeed. Thank you very much,
15 Mr. Fondersmith, and I would agree that some design flexibility
16 might be addressed by the Zoning Commission as long as the BZA
17 gets to review and approve. However, that's a larger discussion
18 that we may have at some point, but I think your point is well
19 taken, Mr. Fondersmith.

20 In fact, what are we looking at here, if not a
21 project that has with minimal effect changed some of the
22 provisions of the zoning, and actually affected perhaps a more
23 positive design in terms of the adjacent properties, but are
24 there questions of Office of Planning at this point?

25 Does the - any - okay, good. Then, let us move on.

1 Thank you very much, Mr. Fondersmith.

2 We have other reports - let's go to the ANC at this
3 point and just note that they have come in as an approval. Ms.
4 Renshaw, you have that in front of you?

5 VICE CHAIRPERSON RENSHAW: Well, the letter is dated
6 April 16, 2002, and it is signed by a Helen, Kramer, the Vice
7 Chair of ANC 2F, and she states that at its regularly advertised
8 monthly meeting on April the 3rd, a quorum being present, the ANC
9 voted four to zero to support the application for a rear yard
10 variance at 1300 N Street Northwest.

11 They ratified the unanimous recommendation of the
12 ANC's community development committee, which had thoroughly
13 reviewed the case on March 25th of 2002.

14 The reasons for supporting the application were the
15 configuration of the building design to the zoning envelope with
16 SP2 is, in the words of the ANC, a better massing in scale than
17 the alternative design with the rear yard setback.

18 It provided a more attractive sight line on the
19 western side of the project, and the design with the rear yard
20 variance is supported by the board of directors of the Crescent
21 Tower Condo, which would be the most affected by the project.

22 CHAIRPERSON GRIFFIS: Good. Thank you very much.
23 Let's just run down, there are several other reports that
24 actually have been mentioned already, but Council Member Jack
25 Evans did, as Exhibit Number 19, the 13th and N 2C, which is the

1 Solo project, also was spoken to and is Exhibit 24.

2 We have the Keener Management, Logan Circle
3 Community Association also dated April 4, 2002, Exhibit Number
4 20. The next report - what am I missing?

5 VICE CHAIRPERSON RENSHAW: Did you mention the
6 Crescent Tower Condo?

7 CHAIRPERSON GRIFFIS: Oh, no, thank you-

8 VICE CHAIRPERSON RENSHAW: They also support.

9 CHAIRPERSON GRIFFIS: -dated - yes, and dated March
10 25, Exhibit Number 18. And I think that's it. Okay. Last
11 chance for anyone that wants to testify in this application,
12 either in opposition or in support. If not, we can have any
13 closing summary remarks that you might have.

14 MS. GIORDANO: Yes, I'll be brief. In closing, I
15 think it's been said by a number of people in a number of ways
16 that this is a unique situation.

17 It's an unusual situation in that due to a number
18 of errors, both on the part of the applicant's development team
19 and the City reviewing agencies, we arrived at a design that does
20 not meet all of the requirements of the R-5-E zone, but what's
21 also unique is that the design is actually better from the
22 standpoint of our neighbors and that they prefer it, and usually
23 these kinds of errors result in additional density or some kind
24 of problem for somebody else, but here actually, it's a better
25 result. So, that's a very unique situation.

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1 There are some unique aspects also, the setting
2 here, the property's primarily rectangular in shape, but the
3 Crescent Towers has an interesting design and the Sutton Towers -
4 the Sutton Plaza sets back mid-block from approximately the area
5 where our courtyard is, all of which kind of call for the kind of
6 design we have here.

7 So, I think that the configuration of the adjacent
8 buildings, combined with our site also create some exceptional
9 circumstances here that call for this design, and clearly, I
10 think everybody can recognize what the hardship would be in
11 having to stop construction, redesign, try and re-mobilize the
12 contractors after redesign, and then again, a lengthy permit
13 review process that we would have to complete with an amendment
14 to our plans which would change much the structural drawings and
15 all of the drawings in the package.

16 So, in conclusion, we think that certainly, there's
17 no impairment of the zone plan here that we're completely
18 consistent with the major zoning objectives and the objective of
19 the R-5-E, and the change of zoning to R-5-E to get residential
20 on this site quickly to the benefit of the City.

21 Thank you very much, and we would ask for a bench
22 decision so that we can avoid further expense in terms of
23 continuing to try and straddle both sides of these designs, as we
24 proceed forward. Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much, and

1 actually, I absolutely appreciate the fact that you've brought up
2 succinctly the configuration of adjacent properties, because it
3 was somewhat alluded to, and it is part and parcel of the entire
4 picture here, but I think that does goes to first of all, part of
5 the uniqueness of this and also in terms of the practical
6 difficulty of, if has been stated, the rear yard set back is for
7 a combination of light and air to the existing or the building in
8 question, but also to adjacent buildings.

9 It seems as that goes to where the adjacent
10 buildings are and the practical difficulty of setting back that
11 rear yard would actually create a less open and less light and
12 air going to the adjacent properties. Do Board Members have
13 questions at this point? Anything in after summary? Okay.

14 What I'm going to do this - I want to take no more
15 than ten-minute recess briefly on this, and we will return. So,
16 I appreciate your indulgence, and we'll be right back.

17 (Whereupon, the foregoing matter went
18 off the record at 10:45 a.m. and went
19 back on the record at 11:01 a.m.)

20 CHAIRPERSON GRIFFIS: Okay, thank you for your
21 patience, and well, it was a little longer than ten minutes.
22 However, Ms. Giordano, I'm going to ask you just to come back up
23 to the table briefly.

24 I absolutely appreciated your closing remarks, and
25 I think we just want to spend a little bit more time on a few

1 things, if - Board Members had some concerns.

2 What would be helpful to me, at this time, is to
3 have my notes that I took into the executive room, but while I
4 get that, why don't I turn it over to the Board for just a
5 specific outline of questions that we'd like just to address.

6 VICE CHAIRPERSON RENSHAW: For the brief moment that
7 our Chair is out of the room, I will chair the meeting as Vice
8 Chair, and Mr. Levy, do you have some statements you'd like to
9 make?

10 MEMBER LEVY: Well, I would like to ask if you would
11 spend a few moments talking to us a little bit more about the
12 first prong of the test and tie that into - tie that more
13 strongly into your request for a variance.

14 CHAIRPERSON GRIFFIS: Good, let me - before you
15 start, let's get everything together, because I don't think we
16 need to spend a lot of time on it, but I think we can kind of
17 pull it all and coalesce together, but I think frankly what is
18 troubling the Board is basing the tested variance, especially the
19 uniqueness, but also the practical difficulty to an error that
20 was made no matter, you know where along the line - I mean, it's
21 clear where it was in this case.

22 It's difficult for us to fill out the information
23 that we need in order to deliberate based strictly on the charge
24 that we have, so what we need to do is flush out a little bit
25 more of the test, as Mr. Levy has said, specifically to

1 uniqueness and the practical difficulty.

2 Certainly, the others are clear - you know, frankly
3 home runs. It's fairly obvious that this fits well within the
4 zone plan and certainly in terms of the detriment, but-

5 MEMBER LEVY: If I could just add to that, you began
6 to lay out an argument based on what's happening around the
7 property-

8 MS. GIORDANO: Right.

9 MEMBER LEVY: -and I think if you build on that, it
10 would be helpful.

11 MS. GIORDANO: Okay. I think maybe if we look at
12 the model, that would be helpful, as I explain that, maybe the
13 architect could help me out by just holding that up a little bit
14 better so you can see.

15 What I'm saying is that there is a certain
16 configuration, both of the adjacent buildings and the site
17 combined that really call out for the design that we're
18 proposing.

19 And first of all, there's the unique shape of the
20 Crescent Tower, which is a crescent shape, and it's aptly named,
21 I guess, sort of curving towards our site, coupled with - if you
22 look at the Sutton Plaza, you can see that the - I guess it's the
23 northern frontage of the building on the alley, the building
24 actually steps back at a mid-block location at about where our
25 courtyard is.

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1 So, there is a setback there, combined with the
2 alley, which first of all, provides light and air and basically
3 makes less important a traditional rear yard setback and also
4 calls out for a special treatment in the mid-block location where
5 we have our courthouse that benefits the windows and the
6 occupants along that setback area of the Sutton Plaza-

7 CHAIRPERSON GRIFFIS: So, it's building off the side
8 yard, essentially, of the existing building, the courtyard that's
9 developed on this building?

10 MS. GIORDANO: Yes.

11 CHAIRPERSON GRIFFIS: I see.

12 MS. GIORDANO: And then the shape of the Crescent
13 Towers, along with the fact that the Crescent Towers has some
14 separation from our property line also where their driveway -
15 there's a driveway there that provides a setback along their
16 eastern property line.

17 So, when you combine all of those elements, the
18 existing open space from the alley on the Sutton Plaza side, the
19 driveway to the garage of the Crescent Tower and the shape of
20 those two buildings with our site, create some exceptional
21 configurations which make a practical difficulty in providing a
22 traditional rear yard and call out for a courthouse design as
23 being more advantageous, both for these budding property owners
24 as well as our own project.

25 CHAIRPERSON GRIFFIS: Good. Thank you. Any other

1 questions at this time? Okay. Thank you, Ms. Giordano.

2 You know, it brings up an interesting point, and I
3 think it's somewhat uncharted territory, certainly for this
4 Board Member, but maybe for the Board of - the practical
5 difficulties of a superior design in a building, and so, as much
6 as I support that, I think clearly, we need a little bit more
7 that reinforces that and reinforces the reasons and the reasoning
8 for the massing of the building and therefore, the courtyard as
9 opposed to the rear yard, as well as the actual test to this.

10 But if there are no other questions from the Board,
11 and if the Board feels able to move on this, I would, in fact,
12 move approval of Application 16871, JBG/JER 13th Street and N, LLC
13 for a variance from the rear yard requirements under Section 404
14 for the construction of the new apartment houses at premises 1300
15 N Street Northwest and ask for a second.

16 COMMISSIONER MITTEN: Second.

17 CHAIRPERSON GRIFFIS: Thank you, Ms. Mitten. Let me
18 briefly speak, because I think I've said a lot on this, but
19 pulling it all together, clearly, the last parts to the test of
20 this are easily done.

21 The difficulty comes from - well, quite frankly, I
22 think this board looked at this as a straightforward variance
23 test. It was not based on a remedy of an error, let us say, on
24 whose ever part.

25 It was taken purely as a variance from the rear

1 yard and to that, I think we have had substantial testimony that
2 gives us the ability to approve this variance based on some of
3 the unique circumstances that led up to the level of construction
4 that we're in now, but I think most importantly, the unique
5 situation and the practical difficulties it would be in terms of
6 maximizing, not just the strict compliance with the zoning
7 regulation, but actually maximizing the ability to provide light
8 and air to the specific project, but also to the adjoining
9 properties, and I think that's where it's of great importance,
10 and that's what - you know, that's what massing is all about.

11 I think regulations, often in terms of the overall
12 setbacks and the specific nature of the footage and square
13 footage of it, sometimes lose the bigger picture of how buildings
14 set into their specific site, which is why, of course, the BZA's
15 here.

16 Again, I would certainly support the ability to
17 show flexibility when design warrants; however, I know full well
18 that our jurisdiction will be immediately limited to the level
19 that we can take that as an entire case.

20 I do not think that that was the - this specific
21 situation, but I think it was, in fact, part and parcel of the
22 overall application, and I think does support, in fact, the
23 approval of this variance, and I will leave it at that and let
24 others speak to the motion, if they would like.

25 COMMISSIONER MITTEN: Mr. Chairman?

1 CHAIRPERSON GRIFFIS: Yes.

2 COMMISSIONER MITTEN: I would like to speak in favor
3 of the motion as well, but I'd like to - I would just like to
4 articulate my own opinion on the subject of the correcting the
5 error, as you put it, which I think that's a very important
6 aspect, at least for me, in meeting the test for an exceptional
7 circumstance in this case.

8 I think it's - the Board needs to be very cautious
9 when it weighs very heavily in favor of superior design and
10 conformance with the zone plan.

11 In terms of that prong of the test sort of
12 overriding the other two tests for the variance, because then you
13 start to stray into the realm of what the Zoning Commission does,
14 as the Office of Planning has indicated, you know, there is
15 certainly - this whole circumstance gives rise to consideration
16 for whether or not there should be some accommodation in the R-5-
17 E zone for corner lots that is similar to that in the SP zone.

18 That's all well and good, but that is not - that's
19 not what is before us. I think there is an exceptional condition
20 here, which is that there was an error, a misunderstanding that
21 was not caught that allowed the applicant to proceed down the
22 road with, you know, a large investment in construction that's
23 already underway, and that's a very important part of the
24 uniqueness test for me.

25 So, I really wouldn't want to lose that in the

1 order, because then we're encouraging other applicants without
2 perhaps the same exigencies as this applicant to come forward
3 just because they have a superior design, and I also think that
4 the issue regarding the error is certainly what influenced the
5 ANC to give their support, because of the vehement language that
6 was in there, in their letter to us, and may have influenced some
7 of the other parties that leant their support to this
8 application.

9 So, I'm very much in favor of granting it, but for
10 perhaps slightly different reasons than the Chair articulated.

11 CHAIRPERSON GRIFFIS: Good, and I appreciate that.
12 Let me just say, though, in terms of the superior design, I think
13 as it goes to mitigating adverse impact, I mean, I think the
14 model photographs that we had, and actually the last illustration
15 with the Crescent building, if you look at that, I can imagine if
16 this first came in or didn't come in because they compartmented
17 the rear yard, that there might've been huge opposition from an
18 adjacent neighbor, the Crescent building, which they would have
19 had no recourse in having dealt with, as this would've been
20 matter of right.

21 And so, we would've lost quite a bit, not to
22 mention the Crescent Towers' views in open light and air, but the
23 City as a whole, I think, would, but that's all I need to say on
24 that.

25 Others? Yes, Mr. Levy?

1 MEMBER LEVY: Mr. Chair, yes. I find that I have to
2 respectfully disagree with my colleague, Ms. Mitten. I have a
3 really difficult time looking at the zoning ordinance, looking at
4 the conditions that are necessary to meet the variance test and
5 seeing where an error by the zoning administrator fits into
6 either the uniqueness of the property or the exceptional
7 practical difficulty that ties - or that stems from that.

8 I'm more swayed by the argument of light and air
9 and a practical difficulty - and site condition that's tied to a
10 combination or provision, rather of light and air for the subject
11 property and for the neighbors. So, I guess I would tend to
12 agree more with your comments.

13 I'm uncomfortable tying the variance test
14 specifically to an error made by the City.

15 MEMBER ETHERLY: Mr. Chair, just to piggyback on my
16 colleague's, Ms. Mitten's points, I support the motion, and I
17 think there's an opportunity to bridge, perhaps where Mr. Levy is
18 and where the maker of the motion and Ms. Mitten comes from, from
19 the standpoint that too, I would be concerned about an error
20 being put forth as the sole grounds for this decision.

21 And I think the Board is being very careful and
22 very circumspect in both the comments about the applicant's
23 efforts to meet the test and that I don't think any of us would
24 agree that an error standing alone is going to be enough to get
25 you over the hump here, and I think that's probably a little bit

1 of the concern that our audience members are hearing,
2 expressments the Board hear, that for any future applicants out
3 there, simply coming in hat in hand, based entirely on an error,
4 is not going to get you through the variance test, but where you
5 have the combination of circumstances here.

6 And, in particular, I, too, Mr. Levy, am swayed
7 when you give consideration to the layout of the adjacent
8 properties surrounding the subject property, the consideration
9 that's being given by the applicant to maintaining the air and
10 the light and the movement thereof, in terms of the interplay
11 between those existing properties and the subject property, I
12 think, is admirable, and I think helps me get a little closer to
13 satisfying that first problem.

14 But I think if there's anything I'd want to leave
15 with the applicant and for future reference, just generally
16 speaking, I agree, Mr. Levy, that an error simply is not going to
17 get you past that first prong of the variance test or any part,
18 but I think we have some additional components here, as discussed
19 by the architect and as discussed by Ms. Giordano which helps
20 satisfy that first prong. Thank you, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

23 CHAIRPERSON GRIFFIS: Yes?

24 VICE CHAIRPERSON RENSHAW: First of all, I would
25 like to thank the Office of Planning for its report. It was

1 extremely helpful, and the information was quite detailed and
2 laid out, and we were treated to a little bit of a history
3 lesson, with a review of the downtown emphasis that the City got
4 into some 20 years ago.

5 And should I say that I hate to say that I was a
6 part of it, when one runs the clock back, one doesn't want to be
7 reminded of the time. However, since we've been reminded of the
8 time, I'll `fess up and say that yes, I was one who boosted the
9 downtown planning and certainly living downtown, because in -
10 just in a side when I moved to Washington, it was a rather empty
11 downtown, so I'm delighted to see that this revitalization of the
12 downtown is really taking hold.

13 I am supportive of this case. It's unfortunate
14 that a confluence of circumstances came about to which the
15 applicant today has admitted partial fault, but nonetheless, this
16 is a very strong development project, and I believe it should go
17 forward.

18 Actually, it's going to have a better, whether you
19 call it a courtyard or a rear yard, it's going to come out to be
20 a better project than if this applicant were told to go back to
21 the drawing boards and reconfigure the space.

22 So, indeed, I'm supportive of the project, and we
23 didn't a feeling as to when the due date - the final date, the
24 date when the building will be dedicated is going to be online,
25 but perhaps, it will be sooner than we hoped.

1 CHAIRPERSON GRIFFIS: Of course, we haven't the
2 motion yet, so that might've been-

3 VICE CHAIRPERSON RENSCHAW: I'm speaking - indeed,
4 but I'm speaking with my support.

5 CHAIRPERSON GRIFFIS: Indeed. No, I think it's
6 appropriate. Okay. Other comments, questions?

7 Very well then, I would ask for all those in favor
8 of the motion, signify aye by saying aye.

9 ALL BOARD MEMBERS: Aye.

10 CHAIRPERSON GRIFFIS: And opposed? I would have
11 Staff record the vote.

12 SECRETARY BAILEY: The vote is recorded as five,
13 zero, zero to approve the application. Mr. Griffis made the
14 motion; Ms. Mitten second; Mr. Levy, Mrs. Renshaw and Mr. Etherly
15 is in agreement and Mr. Chairman, is this a summary order?

16 CHAIRPERSON GRIFFIS: No, it is not.

17 SECRETARY BAILEY: Mr. Chairman, I'm respectfully
18 asking the applicant to submit a draft.

19 CHAIRPERSON GRIFFIS: Thanks, yes.

20 MS. GIORDANO: Excuse me. I hope it's not
21 inappropriate, but I was just going to say that it could be a
22 candidate for a summary order because there was no opposition.

23 CHAIRPERSON GRIFFIS: True. I think it could be a
24 candidate. I think the concern of the Board that I'm sensing
25 from comments is just that we want to be able to articulate all

1 of the circumstances, physical circumstance that led us up to
2 this situation.

3 I don't think it should be - well, in that case, I
4 think obviously to expedite things, if we could ask you to submit
5 a draft order, that would be appreciated, and that will move
6 things along.

7 So, that being said, anything else on that? One
8 last comment, and that is I wanted to do this after the motion
9 was done, but in terms of the accessory use, I don't know if
10 other board members picked that up, but putting it inside the
11 building didn't seem to make a heck of a lot of sense.

12 I'm not sure what trouble I'm going to get into
13 saying all this. However, with the utilization of that
14 courtyard, you know, you look at the rendering now, I mean,
15 that's obviously - it makes a whole lot of sense.

16 So, I - that being said, I couldn't leave it
17 without maybe there's some discussion that can happen further
18 without us. There it is. Thank you all very much.

19 I appreciate your time, your effort and I don't
20 anticipate seeing you shortly. So, there it is, and let's call
21 the next case right away, so that we can move on with the morning
22 schedule.

23 I'm sorry. Then, there's indication, Ms. Renshaw,
24 of May 2, 2002, is that correct?

25 VICE CHAIRPERSON RENSHAW: 2003.

1 CHAIRPERSON GRIFFIS: Oh, 2003, yes, that would be
2 next month now, wouldn't it?

3 [Laughter.]

4 That's really what they mean by instant
5 application, is that right?

6 SECRETARY BAILEY: Ms. Giordano, your model?

7 MS. GIORDANO: Thank you.

8 SECRETARY BAILEY: The next case of the morning is
9 Application Number 16861 of Ingleside at Rock Creek, pursuant to
10 11 DCMR 3104.1 for a special exception to include additional
11 property for use as recreation space, meeting room and guest
12 rooms for family members and guests visiting an existing
13 community residence and health care facility, under Sections 218
14 and 219 in an R-1-A District at premises 5121 Broad Branch Road,
15 Northwest, Square 2285, Lots 3, 4, 803 and Square 2287, Lot 808.

16 Please stand to take the oath all those persons
17 wishing to testify.

18 CHAIRPERSON GRIFFIS: I'm sorry, before you do that,
19 is anyone else in the audience going to testify on this case at
20 all? Okay.

21 SECRETARY BAILEY: So, do you solemnly swear or
22 affirm that the testimony you're about to give in this proceeding
23 will be the truth, the whole truth and nothing but the truth?

24 ALL WITNESSES: I do.

25 SECRETARY BAILEY: Thank you.

1 CHAIRPERSON GRIFFIS: Okay. Before we go too much
2 further, we have a board preliminary matter.

3 VICE CHAIRPERSON RENSHAW: Yes. Mr. Chairman, I am
4 going to recuse myself from this case, because as an ANC
5 Commissioner in 3 - 4G, I participated at the ANC level.
6 However, today under 3106.4, I will be testifying for myself, as
7 allowed in the regulations.

8 CHAIRPERSON GRIFFIS: Good. And so, I would assume
9 evoking 3106.4, that you are a property owner near or adjacent
10 to. Very well, we'll give you a moment to reposition.

11 SECRETARY BAILEY: Ms. Renshaw will have to be
12 sworn.

13 CHAIRPERSON GRIFFIS: Indeed. Why don't we wait for
14 that and then we'll proceed.

15 MEMBER ETHERLY: Then, Mr. Chairman, just to
16 clarify, Ms. Renshaw-

17 CHAIRPERSON GRIFFIS: You're not testifying?

18 MEMBER ETHERLY: No, I'm not.

19 CHAIRPERSON GRIFFIS: Okay.

20 MEMBER ETHERLY: Ms. Renshaw is testifying in her
21 individual capacity as a resident. She is not seeking party
22 status, and further, Ms. Renshaw has not taken - has not
23 participated in any way in the discussion of this case or
24 application.

25 CHAIRPERSON GRIFFIS: Right.

1 MEMBER ETHERLY: Just wanted to be sure that was
2 included in the record.

3 CHAIRPERSON GRIFFIS: Good. Thank you.

4 SECRETARY BAILEY: Mrs. Renshaw, we will need for
5 you to be sworn in, please. Do you solemnly swear or affirm that
6 the testimony you're about to give in this proceeding will be the
7 truth, the whole truth and nothing but the truth?

8 MS. RENSHAW: I do.

9 CHAIRPERSON GRIFFIS: Okay. I think we're all
10 ready.

11 MS. PRINCE: Good morning, Chairman Griffis and
12 Members of the Board. I am Allison Prince with Shaw Pittman, and
13 I'm here today on behalf of Ingleside at Rock Creek, a retirement
14 community formerly known as the Presbyterian Home and newly added
15 to Ward Four, I should add. I see a representative from Council
16 Member Fenty's office here.

17 Ingleside is located at 3050 Military Road in Chevy
18 Chase, D.C. The retirement community contains independent living
19 apartments, assisted living units and nursing beds for a total of
20 approximately 270 residents. There are 209 parking spaces on the
21 property.

22 The most recent BZA case involving Ingleside
23 authorized the construction of 102 independent living apartments
24 along with a 138-space parking garage.

25 That project, which was approved in 1997 was

1 completed in 2000 and is fully occupied. Some of the residents
2 are here joining us today. Did you have a question? Okay.

3 As a result of the Board approval in 1997, we have
4 regular meetings with community representatives. It's an
5 advisory council that was formed to ensure that there is a
6 continuing dialog with the community, and I can say as the person
7 who has attended every one of those meetings, that we are not
8 aware of any noise issues relating to the activities of the
9 residents on the property, nor are we aware of any traffic
10 impacts associated with the use. They simply have not been
11 raised in any of these meetings.

12 The subject proposal involves the expansion of the
13 Ingleside camp is to include a 1.2- acre site improved with a
14 single-family house, effectually known as the Peebles Mansion.

15 Donahue Peebles owned this property in the late
16 '80's and sold it to the Presbyterian Home at a greatly reduced
17 cost. It was part gift, part purchase by the home, and the
18 address is 5121 Broad Branch Road.

19 Ingleside seeks permission to use this house as
20 part of the retirement community, with meeting rooms and
21 recreation space on the main level and four guest apartments on
22 the second floor; the third floor will continue to be used for
23 residential purposes.

24 There is no new construction involved with this
25 proposal, nor is there any change to the number of residents at

1 Ingleside. The existing parking spaces are more than adequate to
2 accommodate the needs that will be generated by the proposed use
3 and there are an additional six parking spaces associated with
4 the house itself.

5 Because of its location and the nature of the use,
6 the use will not generate any adverse impacts on adjacent
7 property or nearby property.

8 I should note, just to put this issue to rest at
9 the outset, that I filed this application, including with it,
10 within it, the entire campus of Ingleside and the reason I did
11 that, was twofold.

12 First, this use is not a freestanding use; it's an
13 accessory use. It's accessory to the Ingleside Retirement
14 Community. Second, I wanted to reiterate that all of the
15 conditions associated with the original Ingleside approval will
16 govern this property.

17 We're not proposing any changes to those
18 conditions; we're simply proposing three additional highly-
19 detailed conditions that were approved by the ANC and that will
20 specifically govern this building in addition to those many, many
21 conditions included in the original order.

22 I'm pleased to report that the application is
23 supported by the Office of Planning, the D.C. - is it the
24 Department of Transportation or the D.C. - whatever it is - DPW
25 and ANC 3G. We are aware of no opposition.

1 If the Board has no questions, I'd like to proceed
2 with the testimony of our only witness, Peter Heck, who is the
3 new executive director of Ingleside at Rock Creek.

4 CHAIRPERSON GRIFFIS: One quick clarification. I
5 think you stated it, but all the conditions of the previous BZA
6 order are in compliance.

7 MS. PRINCE: That is correct.

8 CHAIRPERSON GRIFFIS: Okay. Good.

9 MR. HECK: Good morning, Chairman Griffis and
10 Members of the Board. My name is Peter Heck, and I currently
11 reside at 3006 Military Road. I am also the new executive
12 director of Ingleside at Rock Creek, the existing retirement
13 community located at 3050 Military Road Northwest.

14 I am pleased to be here today to present our
15 proposal to use an existing single-family house located at 5121
16 Broad Branch Road in connection with our retirement community.

17 Ingleside purchased the Broad Branch property,
18 which we refer to as the Manor House, in 1996, during the time
19 period of this board's consideration of Case Number 16138, which
20 involved a significant 102-unit expansion of Ingleside.

21 Ingleside now seeks special exception approval for
22 the use of the Manor House for recreation space and meeting rooms
23 for the residents of Ingleside and for four short-term guestrooms
24 for traveling family and friends of Ingleside residents.

25 The proposed use is permitted with special

1 exception approval by this board pursuant to Sections 218 and 219
2 of the Zoning Regulations, which govern community residents and
3 health care facilities.

4 Ingleside is seeking approval of the proposed use
5 as one that is accessory to the principle use. Ingleside is not
6 seeking approval of the Manor House as a separate free-standing
7 use, but rather as an integral part of this retirement community.

8 The granting of this special exception will not
9 increase the number of Ingleside residents, nor will it have any
10 adverse impact on the surrounding community. It will, however,
11 greatly improve the quality of life for Ingleside residents and
12 their loved ones.

13 There will be no renovation or construction under
14 this proposal, although Ingleside does request permission to
15 perform any construction necessary to meet the requirements of
16 the Americans with Disabilities Act, such as wheelchair ramps, if
17 applicable.

18 By way of background, Ingleside has had a
19 significant presence along Military Road for over 41 years of its
20 96-year history. The campus consists of approximately 12½ acres.
21 The Manor House property will add another 1.2 acres to the
22 campus.

23 The campus is developed to a small fraction of its
24 maximum-permitted density of 40 percent. The overall lot
25 occupancy is approximately 14 percent.

1 The Manor House property sits to the south of the
2 main property and therefore, is significantly buffered from
3 residential properties along Military Road and 29th Street by the
4 Ingleside facility itself.

5 The Manor House is located between the Embassies of
6 Tunisia and the Ivory Coast. The nearest non-Embassy residential
7 properties are approximately 300 feet away.

8 The proposed use of the Manor House is a typical
9 accessory use in a retirement community. Specifically, meeting
10 rooms and recreational rooms are common and already exist in the
11 main facility. In addition, many retirement communities
12 throughout the country and in the District of Columbia
13 specifically offer guestrooms to friends and family of residents.

14 Guestrooms are highly desirable for residents and
15 their families. The guestrooms eliminate the need for back and
16 forth traffic between the community and hotels. Further, the
17 rates are less costly than hotels.

18 We appeared before Advisory Neighborhood Commission
19 3G at two separate meetings to present our proposal. I am
20 pleased to report that ANC voted unanimously to support our
21 application. That recommendation incorporated the conditions
22 that we presented to the ANC. Specifically, the conditions are
23 as follows.

24 One, there shall be no rental to or use of the
25 building by groups or persons that are not related to Ingleside,

1 except that community organization such as ANC 3G may use the
2 building up to a total of four times per year.

3 Number two, large events shall be limited to one
4 per month. Large events shall be defined as events involving 75
5 or more attendees, the majority of whom are not residents of
6 Ingleside. Such events shall be limited to one per month.

7 The Ingleside security personnel shall be
8 responsible for managing any parking demands associated with
9 those events to ensure that there is no spillover parking in the
10 neighborhood.

11 It should be noted that there is ample parking
12 available in the evenings and on weekends. As a matter of fact,
13 during the day, there are typically as many as 24 open parking
14 spaces around the campus.

15 And number three, the guest apartments shall be -
16 I'm sorry, let me go back to number two. The maximum occupancy
17 of the building for any event at any time shall be no greater
18 than 150.

19 Number three, the guest apartments shall be
20 available only for family and friends of residents of Ingleside.
21 The maximum stay shall be one week. In the event of extenuating
22 circumstances, that maximum stay limit may be waived.

23 We are confident that the proposed conditions the
24 Manor House will operate with no adverse impacts on the
25 surrounding community and will enhance the quality of life for

1 our residents and guests. We look forward to your decision on
2 this application. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much. So, by
4 listing those conditions, you are accepting of them?

5 MR. HECK: That's correct.

6 CHAIRPERSON GRIFFIS: Okay. Well, - all right, any
7 other questions from the Board? We can proceed.

8 COMMISSIONER MITTEN: I just had one-

9 CHAIRPERSON GRIFFIS: Oh good.

10 COMMISSIONER MITTEN: -question. What type - on the
11 second condition related to the large event and the fact that a
12 majority of the attendees would not be residents of Ingleside,
13 what type of event are you anticipating?

14 MR. HECK: Events would be similar to or such as a
15 50th wedding anniversary, maybe a, you know, a birthday that was
16 rather special for one of our residents, so it would likely
17 entail something involving a resident, but it might have friends
18 and family from out of town that would be attending that event.

19 COMMISSIONER MITTEN: Well, I guess what I what to
20 understand is, are these events going to be necessarily related
21 to residents of Ingleside, or are you going to be-

22 MR. HECK: Yes, that is - yes, we would not be
23 opening up to anyone to come in and utilize the Manor House. It
24 would have to have an association with Ingleside, with the
25 residents-

1 COMMISSIONER MITTEN: Okay. I don't - maybe that's
2 just my lack of clarity on it, but I don't think that's
3 necessarily articulated in the condition.

4 MS. PRINCE: The first condition, if you'll note,
5 and the conditions are cited in the ANC letter, will be that
6 there shall be no rental to or use by the building by groups or
7 persons-

8 COMMISSIONER MITTEN: Okay.

9 MS. PRINCE: -that are not related to Ingleside. We
10 wanted to be very clear on that.

11 COMMISSIONER MITTEN: Okay, thanks.

12 CHAIRPERSON GRIFFIS: Right. MEMBER ETHERLY:
13 Just to follow up on Ms. Mitten's comments, continuing with that
14 first condition, are you in agreement that that is - that'll be
15 the case except for community groups such as ANC 3G.

16 CHAIRPERSON GRIFFIS: Well, they proposed the
17 condition. You would think-

18 MEMBER ETHERLY: Right, right, that's what I - I
19 just wanted to-

20 MS. PRINCE: That would be the only exception, would
21 be community groups.

22 MEMBER ETHERLY: Okay.

23 MS. PRINCE: That's the only exception.

24 MEMBER ETHERLY: Thank you. Thank you, Mr. Chair-

25 CHAIRPERSON GRIFFIS: No, and I think that's

1 appropriate-

2 MEMBER ETHERLY: -I was just clarifying because that
3 language wasn't included.

4 CHAIRPERSON GRIFFIS: Right, indeed. I may be a
5 little flippant. My concern, frankly, this may be a little too
6 early to get into this, so - well, we're on the conditions, let
7 me just speak to this.

8 If you look at two and three, first of all, two,
9 which is limiting the size of events to 150 persons. One, I'm
10 more inclined to look at the occupants based on the code for the
11 occupancy of that building.

12 I'd be surprised - I don't know; I don't know the
13 square footage - I'd be surprised if they would have the capacity
14 to upwards of 150, but maybe it is.

15 I also think that it seems to be stepping into a
16 field of jurisdiction that I'm not sure first is warranted in
17 this case, if we can limit it to the occupancy based on the
18 building code and enforceability, of course, is always a concern
19 that I have for issues of that.

20 Secondly, or the third condition - I mean, let's
21 talk enforceability on that one. Maximum stay to be one week,
22 and then the maximum stay limit can be waived, you know - that's
23 all well and good.

24 I think there would have to be some relief, but
25 based on the fact that this is as defined in zoning an issue of a

1 transient guest, I think it would probably be more appropriate if
2 we gave some definition on the transient nature of the use of
3 this building rather than try and limit it specifically.

4 I don't think that condition is very strong for
5 what it's trying to do, and I think we can change it, but that
6 being said, those are my concerns at this point. Why don't we
7 continue on and see if we get any other-

8 MS. PRINCE: I can address the occupancy issue, if
9 that's all right. We did look at the building code allowances
10 and what would be permitted in the building, and quite frankly,
11 it was a number that I felt wouldn't be comfortable with. The
12 building, under the building code, can support between 260 and
13 300 people, which just was an event that was too large for what
14 would ever be held there.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. PRINCE: So, we cut it in half.

17 CHAIRPERSON GRIFFIS: But it's based on what, square
18 footage of standing non-fixed tables and chairs-

19 MS. PRINCE: Exactly.

20 CHAIRPERSON GRIFFIS: You know, you're packing
21 people into, you know, standing-room only in that building. I
22 understand that.

23 MS. PRINCE: Right. So, since we have no interest
24 in doing that, we felt the community would like to see a cap. We
25 offer the cap, and I think the cap was meaningful to the ANC.

1 CHAIRPERSON GRIFFIS: I see. Okay.

2 MS. PRINCE: Because they certainly didn't take it
3 out.

4 CHAIRPERSON GRIFFIS: Right. Okay. That makes
5 sense. Okay.

6 MS. PRINCE: That completes our presentation. Whoo-
7 hoo.

8 CHAIRPERSON GRIFFIS: Wait a minute. How does that
9 go into the record, I wonder. Why don't we just strike that
10 whole thing, because I'm not sure on spelling.

11 [Laughter.]

12 Okay. Let's - I'm sorry, let's focus on this, and
13 let's go to the Office of Planning, and good morning to you.

14 MS. THOMAS: Good morning, Mr. Chairman, Members of
15 the Board. I am Karen Thomas presenting OP's opinion on
16 Ingleside's application to incorporate the former Peebles
17 Mansion, which the applicant currently owns as part of the main
18 Ingleside facility, for use as a rec facility, meeting room and
19 guest home by the residents of the facility.

20 OP's analysis examined the impact the facility
21 would have on the neighborhood due to traffic and noise, and
22 whether this is a common use by these types of facilities.

23 Based on conversations with the applicant and
24 presentations made by the applicant at the ANC committee meeting
25 on April 8th, OP based its determination on the following.

1 The applicant does not anticipate a substantial
2 increase in the number of visitors or employees to the facility.

3 Visitors will be the same visitors to the facility, except that
4 they have an option to stay overnight for no more than one week.

5 Reservations will be made by residents only.

6 No new employees will be hired for maintenance of
7 the addition, and the applicant does not intend to apply for a
8 liquor license. Events will be resident organized and are not
9 anticipated more than twice per month, and the facility has more
10 than ample parking space.

11 The guest facility will use a common accessory use
12 of these type of resident facilities with examples in D.C., such
13 as the Washington Home, the Chevy Chase House and Westchester
14 Cooperative.

15 OP contends that once these conditions are
16 maintained, the addition will preserve the intent of the zoning
17 regs and should not have an adverse effect on neighboring
18 properties.

19 At this time, we would like to amend our report on
20 Page 5, to delete the condition we had, the condition statement
21 we had, and incorporate the BZA's conditions in the following
22 statement.

23 Therefore, OP recommends approval of this special
24 exception request, subject to the conditions of BZA Application
25 16861, as adopted by ANC 3G on 4-22-02, and the applicant's

1 continued observance and the conditions outlined in the previous
2 BZA Order 16138, including Conditions 9, 10, 11 and 12,
3 referencing permanent access, the advance notice of BZA filings,
4 moratorium and cooperation on general committee issues.

5 Thank you, Mr. Chairman, and that concludes OP's
6 report.

7 CHAIRPERSON GRIFFIS: Good. Thank you very much.
8 Any questions of OP at this time from the applicant and the
9 Board? Okay.

10 Well, we absolutely appreciate that, and I think
11 the report is comprehensive specifically looking at 219 and some
12 of the issues that could become apparent or problems.

13 I think a lot of - I think there's a lot of work
14 that's gone on in the past that has made this perhaps a more
15 simple case to understand and I think that - we'll get to that,
16 but I think that goes to appreciation of the community and the
17 ANC around the Ingleside community, and it looks as though things
18 are working well with each and between each.

19 So, if there are no other questions of OP, let us
20 go to other government reports. I have a letter from Mr. Layden,
21 which actually brings up a question in my mind. It's dated April
22 26, 2002. It's Exhibit Number 27, and he brings up the fact that
23 17 parking space for the new use would be required, but has only
24 three parking spaces. Is it my understanding - actually, Ms.
25 Prince, why don't you speak to this quickly?

1 MS. PRINCE: I completely disagree with the
2 statement that 17 spaces are required. I think the Board
3 determines the number of spaces required for a retirement
4 community wasn't worth the argument-

5 CHAIRPERSON GRIFFIS: Right.

6 MS. PRINCE: -but in addition, we are providing six
7 additional spaces adjacent to the house, not three.

8 CHAIRPERSON GRIFFIS: I see.

9 MS. PRINCE: And the on-site inspection done by the
10 DPW official missed three of the spaces, but there are six.

11 CHAIRPERSON GRIFFIS: Okay. Six and then adjacent -
12 well, doesn't this bring up an issue of - is it on the same lot
13 area or what's the adjacency in that there's the whole parking -
14 it's my understanding there's other parking on site.

15 MS. PRINCE: Right. That's why I'm saying this is
16 being processed as an accessory use.

17 CHAIRPERSON GRIFFIS: I see.

18 MS. PRINCE: It is adjacent to the principle campus,
19 contiguous with the principle campus, and should for zoning
20 purposes be treated as a single campus, and that's why I had the
21 case advertised in that way to make it very clear that everything
22 is done on a - it's simply not a free-standing use, so there's no
23 way to even evaluate what the parking requirement would be. You
24 have to look at the retirement community as a whole.

25 CHAIRPERSON GRIFFIS: Right, and as you're saying,

1 actually, obviously as the accessory use is sharing the parking,
2 that is located - it is part of the entire project.

3 MS. PRINCE: Exactly.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. PRINCE: I mean, there's more than enough space
6 on this 1.2 acre site to add more parking.

7 CHAIRPERSON GRIFFIS: I see.

8 MS. PRINCE: I don't believe it's necessary nor
9 required.

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER ETHERLY: Mr. Chairman, just to help clarify
12 a follow up from Ms. Prince, because I noticed you were looking
13 at the Office of Planning report, the overhead photographic shot
14 - Ms. Prince, if you happen to have a copy of it, perhaps just to
15 orient my colleagues with respect to parking.

16 Once again, there's not a page number for the
17 overhead shot, but the portion of the photograph that identifies
18 the proposed rec facility and guestrooms is highlighted.

19 You will note what appears to be - if you look very
20 closely, three cars at one end of the U-shaped driveway. Is that
21 the kind of adjacent parking for that particular facility?

22 MS. PRINCE: It's really not legible from this map,
23 but directly east of the house in the house's side yard.

24 MEMBER ETHERLY: Okay.

25 MS. PRINCE: There's a paved area with six parking

1 spaces.

2 MEMBER ETHERLY: Okay. And then in terms of the
3 surplus parking that would be accessible for guests and/or users
4 where, you know, once again, maybe just broadly speaking, where
5 is that indicated on the overhead?

6 MS. PRINCE: Sure. If you look north, directly
7 north of the Tunisian Ambassador's resident-

8 MEMBER ETHERLY: Yes.

9 MS. PRINCE: -you can see lines of parking. That's
10 the surface parking spaces. There are about 70 surface parking
11 spaces, but then, in addition, directly north of 5121, you see
12 the square base building which is part of the 102-unit expansion;
13 there's a large garage, a 138-car garage is part of that.

14 Mr. Heck tells me there are even ten spaces in that
15 garage that have never been assigned to anybody that are
16 available at all times.

17 MR. ETHERLY: Okay.

18 CHAIRPERSON GRIFFIS: Is this a current photograph?

19 MS. PRINCE: It actually is fairly current. It was
20 mid-construction. It appears to have been done mid-construction.
21 The site seems pretty ripped up. It doesn't look like the
22 landscaping is in yet.

23 CHAIRPERSON GRIFFIS: Yes, there's no instruction -
24 what my understanding of what you're saying is below the - what
25 we're-

1 MS. PRINCE: Oh, actually, yes, right it was still
2 being constructed at the time this aerial photo was taken, yes,
3 you're right.

4 CHAIRPERSON GRIFFIS: So, that's actually completed
5 construction?

6 MS. PRINCE: It's completed.

7 CHAIRPERSON GRIFFIS: Okay.

8 MEMBER ETHERLY: Thank you, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Yes. Any other questions?
10 Okay. Well, we certainly appreciate D-DOT's report in terms of
11 bringing that to light. Yes-

12 MEMBER LEVY: Mr. Chair, I don't know if we got
13 there in discussing the report, but it is an overall favorable
14 recommendation.

15 CHAIRPERSON GRIFFIS: Oh, good point. I was
16 belaboring on the negative, but nonetheless, it was in support.

17 Okay. I do not have other government reports
18 unless others have come in. I don't have listing of it, so we
19 can go to the ANC report. Is there - okay, and we talked about
20 it, it is Exhibit Number 28; it is dated April 26th signed by the
21 secretary, Alan Beech.

22 One piece of this, which I think, and I've kind of
23 briefly spoken to, but obviously the ANC has been very active in
24 the history of this community, and I think it should be well - it
25 should be stated for the record that this is one of the first -

1 actually I shouldn't say that, but an exception to the ANC
2 reports that we get in that it actually lays out an awful lot of
3 the zoning issues that are attendant to the application, and then
4 obviously goes into some of the terms and conditions that they
5 are interested in seeing pursued.

6 And overall, it is in - a vote was taken in support
7 of the application. April 22nd is duly noted as the public
8 meeting, so I think we can grant it the great weight it so
9 deserves and I think we'll get back to that and get some
10 specifics as we move along with this. Mr. Levy, did you have
11 something on that?

12 MEMBER LEVY: I just wanted to make sure you were
13 going to address their conditions. I know the applicant has
14 referred to them, but the conditions are outlined in-

15 CHAIRPERSON GRIFFIS: Yes, indeed, and no, I
16 absolutely appreciate you bringing that up, but I think we will -
17 I don't think we need to reiterate them know; they were read.
18 Okay.

19 SECRETARY BAILEY: Mr. Chairman, there was a
20 document that was passed out this morning, and it's a petition
21 that's signed by neighbors, abutters to the property. It's a
22 one-sheet document, and-

23 CHAIRPERSON GRIFFIS: Good, yes, appreciate that.
24 Do we have an exhibit number on that or do I have that over here?

25 SECRETARY BAILEY: No, I don't think that was locked

1 in. It was just handed out this morning, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Okay. It will be Exhibit
3 Number 29.

4 SECRETARY BAILEY: Don't touch my paperwork.

5 CHAIRPERSON GRIFFIS: Is that right or is that not
6 correct?

7 SECRETARY BAILEY: What - I'm sorry?

8 CHAIRPERSON GRIFFIS: Oh, nothing, I thought you
9 were reacting to that. It looks as though it may be 29, and it
10 is signed - today is April 30 - it is indicated in the top
11 heading that the signatures below are from abutters to the
12 Ingleside Presbyterian Home and that they request the Board of
13 Zoning Adjustment bar outdoor amplification, speakers,
14 microphones, electrical musical instruments in connection with
15 the use of the Manor House lawn to allow abutters the quiet
16 enjoyment of their premises.

17 Okay. Let's get clarification from the applicant.
18 Is there a proposed loudspeaker installation as part of the
19 renovation of the Manor?

20 MS. PRINCE: Certainly not.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. PRINCE: However, there could conceivably be an
23 occasional event that would require the use of a microphone.
24 This is not a common occurrence at Ingleside, but possible.

25 It is possible that there could be outdoor music,

1 and this issue was discussed extensively at the ANC meeting, and
2 the ANC adopted its motion and declined to include this requested
3 condition.

4 CHAIRPERSON GRIFFIS: I see. Okay. Well, Board
5 Members, I think it is something of deliberation for us. I think
6 if - well-

7 MEMBER LEVY: Mr. Chair, is there anyone here from
8 the ANC today? No?

9 CHAIRPERSON GRIFFIS: Okay. A couple of things - as
10 I say it's obviously signed by a lot of the abutting neighbors.
11 Let me go to the aerial photograph again, because I think it
12 wasn't necessarily given today, but the distance separation from
13 the properties obviously is - yes, yes, okay, very good point.

14 I just wanted to address the issues as they come
15 up, but we can get into that later, as one of my board members
16 has given an opinion of what we should progress on with, so let's
17 move on, and am I missing any other submissions or reports that
18 need to be called to the attention of the record at this point?

19 Anybody see any notes that I have not on my notes?

20 If not, we can go to persons testimony, in which case I think we
21 only have one indicated. Is that correct? Very good.

22 So, Ms. Renshaw, you're welcome to come forward,
23 and I would call everybody in support or in opposition at this
24 time, if they're going to testify, they can come to the table and
25 then Ms. Renshaw, as you introduce yourself, you can give us an

1 indication of which way you're going with that.

2 MS. RENSCHAW: Thank you very much, Mr. Chairman and
3 Members of the Board. I know that I am being tightly timed, and
4 so I am going to speak rather quickly and to the point.

5 I am a 28-year neighbor of the Presbyterian
6 Home/Ingleside. I have lived through two enlargements of the
7 home, one back in the '80's when I was told by a home official
8 that that would be it, and then again in the '90's from '96 to
9 2000, when they had the major addition of the Ingleside wing.

10 I back the proposed use of the Manor House,
11 Application 16861, subject to a condition that would require the
12 Presbyterian Home/Ingleside to disallow amplified sound from
13 outdoor Manor House functions and activities.

14 I should pause a moment here just to introduce
15 myself for the record. I'm Anne Mohnkern Renschaw, and my address
16 is 2910 Military Road Northwest, Washington, D.C. 20015.

17 Now, why is noise control important to me as an
18 abutter to the Presbyterian Home facility. Well, my home fronts
19 on Board 34's Main Street Military Road.

20 Approximately 35,000 vehicles a day roar by my
21 little white house, the front door of which is only used to get
22 the morning papers and bring in the mail. Add to that the ever
23 present sirens from emergency vehicles that use Military Road to
24 reach hospitals, fires, police scenes and accidents.

25 At the request of an Ingleside resident, who is

1 disturbed by the sirens, I have asked the City to install a quiet
2 sign on Military Road at the entrance to the home. When weather
3 permits, I leave behind the noise of Military Road and retreat to
4 my backyard for quiet and peace.

5 The value of my property is the tranquility of the
6 backyard, about three house lots deep stretching to the alley
7 that parallels the Ingleside addition just across the ravine.

8 Now, if you look at an aerial map, and I refer you
9 to the aerial map in the Statement of the Applicant, Exhibit 20 -
10 it looks like it's 25, and it would be Tab A, one would think
11 that the Manor House lawn is a distance from my home, but if you
12 crease the map at the stream line, the width from the 29th Street
13 alley behind my house to Ingleside shortens considerably.

14 The Manor House is situated at a point where the
15 land falls away toward the home of the Ambassador of the Cote
16 D'Ivoire and the ravine. Sound carries across and down the
17 ravine, depending on the wind and the amplification at the
18 source.

19 Ambient noise associated with Presbyterian
20 Home/Ingleside activities has been intrusive over the years.
21 Malfunctioning outdoor equipment, commercial truck deliveries
22 that could be heard blocks from this site, multi-year
23 construction noise and even too-loud music from Ingleside's
24 dedication event that permeated my otherwise restful backyard.

25 Such noise has in the language of the special

1 exception affected adversely the use of my property.

2 The solution to this noise problem relating to the
3 Manor House is no cost and easy. It does not require sound
4 engineer studies, expenditures of money, nor the curtailment of
5 Manor House functions and activities.

6 It merely entails moving Manor House amplified
7 events to Ingleside's large indoor communal spaces or inside the
8 Manor House itself, which can accommodate 150 people, the agreed-
9 to functions cap.

10 Reception lines, photo opportunities, eat and greet
11 events could still take place on the Manor House lawn, but please
12 without the amplification of sound associated with large-scale
13 outdoor group events, and I just want to point out that while
14 there is a restriction on the number of large functions which is
15 between 75 and 150, there is no limit on functions up to 74
16 people.

17 The District's Noise Control Act, Title 20, Chapter
18 27, 2700.1 states, "It is the declared public policy of the
19 District that every person is entitled to ambient noise levels
20 that are not detrimental to life, health and the enjoyment of his
21 or her property."

22 218.5 and 219.5 of the Zoning Regulations stress
23 that a facility cannot have an adverse impact on the neighborhood
24 because of noise as one of the impacts.

25 So, I ask the Board therefore, to condition its

1 order on Application 16861 to exclude amplification - again, I
2 agree with the neighbors; loudspeakers, microphones and/or
3 electrical musical instruments for any outdoor Manor House event.

4 That would satisfy abutting complainants such as
5 myself and relieve concern about noise associated with Manor
6 House outdoor functions, and I thank you all for your
7 consideration of this request.

8 CHAIRPERSON GRIFFIS: Thank you very much, Ms.
9 Renshaw. Any questions of Ms. Renshaw?

10 MS. RENSHAW: I will point out because Attorney
11 Prince stated in her opening statement that she was not aware of
12 any traffic noise or parking issues, those issues have been
13 addressed in the advisory council meetings.

14 We're supposed to have four a year. The meetings
15 are irregular. They are at 8 a.m. in the morning, and it's very
16 difficult, I might say, to get representation from the whole
17 neighborhood because of the time, but in any case, those issues
18 of traffic noise and parking have come up.

19 CHAIRPERSON GRIFFIS: Good. Okay. Ms. Prince?

20 MS. PRINCE: Good afternoon, Ms. Renshaw. I just
21 have a few questions for you. Regarding the advisory committee
22 meetings, I noticed that several of the abutters signed this
23 petition.

24 Have any of these abutters attended any advisory
25 committee meetings to which they're invited and expressed concern

1 about noise associated with any events at Ingleside?

2 MS. RENSCHAW: Ms. Prince, I want to tell you that
3 the neighbors have expressed frustration with the Home, and the
4 time is - they throw their hands up, because many of the
5 neighbors are working people or they are senior citizens and they
6 find the time inconvenient.

7 They may have, unfortunately, washed their hands of
8 trying to reach the - you or the Presbyterian Home officials, but
9 they certainly have reached me.

10 CHAIRPERSON GRIFFIS: I'm sorry, just to interrupt.

11 I think the question of what I want to do is not go too far
12 afield of speculation or you answering for-

13 MS. RENSCHAW: Exactly.

14 CHAIRPERSON GRIFFIS: -other people that are around,
15 but I think the question directly put was whether you knew of
16 these signees attending any of the advisory committee meetings
17 and bringing up the concern that is presented at the petition.

18 MS. RENSCHAW: They have not been to the meetings
19 because of the reasons that I've expressed.

20 CHAIRPERSON GRIFFIS: Okay. MS. PRINCE: And
21 we'd happy to revisit the time. The eight o'clock time was at
22 the request of the immediately abutting neighbor, and that's why
23 we made it eight o'clock because of Winslow Tuttle.

24 Any of these neighbors - I'm wondering if any of
25 these neighbors attending the ANC meeting?

1 MS. RENSCHAW: No, they did not.

2 MS. PRINCE: And, Anne, at that ANC meeting, did the
3 Commission go into a lengthy decision at its decision to not
4 adopt your recommended condition regarding amplified music?

5 MS. RENSCHAW: I was speaking on behalf of the
6 abutters for the property, whose views should have been more
7 seriously recognized by the ANC, but once again, because this
8 came up in the '90's, the ANC voted against the abutters' wishes.

9 MS. PRINCE: And, Ms. Renschaw, are you aware that
10 your house is about 700 feet away from-

11 MS. RENSCHAW: Yes, and I can hear the noise, and
12 that's why I'm here today, because the Presbyterian
13 Home/Ingleside is before the Board to ask for this special
14 exception, which contains language that would protect my property
15 rights also, and it is an issue that can be, shall we say, nipped
16 in the bud at this time.

17 You're in the planning stages; you're looking ahead
18 to putting on events; you have already used the property for
19 different events at the Home.

20 So, now we are bringing this to you before it gets
21 more magnified. It is a better time to address the problem than
22 after the fact, after the Board has ruled.

23 CHAIRPERSON GRIFFIS: Anything else? Okay.

24 COMMISSIONER MITTEN: Mr. Chairman, I just had two
25 questions for Ms. Renschaw.

1 CHAIRPERSON GRIFFIS: Yes, good.

2 COMMISSIONER MITTEN: One is, is there any reason
3 why you didn't sign this petition?

4 MS. RENSHAW: I am testifying today, so I thought
5 that my testimony supported that.

6 COMMISSIONER MITTEN: Okay, and then on the
7 occasions that you cited where there was - where there was
8 offensive noise coming from the Ingleside property, were those
9 noises in your view exceeding the noise ordinance or at hours
10 that were outside the hours for such levels of noise as
11 articulated in the noise ordinance?

12 MS. RENSHAW: Well, I didn't have any little-

13 COMMISSIONER MITTEN: No, in your view.

14 VICE CHAIRPERSON RENSHAW: I believe that yes, they
15 did exceed what I felt would be normal noise limits.

16 I did correspond with the Reverend Bell over noise
17 issues, and did not have a response back from him, but I had
18 contacted him about it.

19 The dedication took us by surprise. I work from my
20 home, and I am out in good weather, doing work, reading
21 voluminous files, as I have to do every week, in my backyard, and
22 the sound comes as a surprise to us.

23 We don't expect to have music at that time of day.

24 We feel that it couldn't be contained by just taking the event
25 inside, and then it's fine. It doesn't mean cut out the event;

1 it just means put it indoors.

2 COMMISSIONER MITTEN: Thank you.

3 MEMBER LEVY: Mr. Chair?

4 CHAIRPERSON GRIFFIS: Yes?

5 MEMBER LEVY: Quick question for Ms. Renshaw. You
6 referred to Exhibit A of the Statement of the Applicant, which is
7 the aerial photograph.

8 MS. RENSHAW: Yes.

9 MEMBER LEVY: It appears to me, and I'd just like
10 for you to clarify this, but it appears to me that your property,
11 and for that matter, the properties of all the people that signed
12 this petition are not actually abutters to the lot to the
13 property in question, but you're abutters to the existing home,
14 is that correct?

15 MS. RENSHAW: Well, this is being brought into the
16 Home. In other words, this is an accessory use to the Home, and
17 it very much, where it is positioned, Mr. Levy, the sound from
18 any event on the lawn of that property would affect our
19 properties.

20 MEMBER LEVY: And I understand that you're
21 testifying to that, but I'm a little bit confused by the fact
22 that you identify yourself as an abutter, when, in fact, the
23 property seems - there are other properties between you and the
24 subject property.

25 MS. RENSHAW: I'm one of the Military Road abutters

1 on the 2900 block, and then it turns to the 5300 block of 29th
2 Street-

3 MEMBER LEVY: Right-

4 VICE CHAIRPERSON RENSHAW: -and they - these
5 properties, we all back up to the 29th Street alley.

6 MEMBER LEVY: But not to the property at 5121 Broad
7 Branch Road?

8 MS. RENSHAW: No, but that is part of the
9 Presbyterian Home property. That is considered part of, what we
10 call, the reservation.

11 MEMBER LEVY: All right. Thanks.

12 CHAIRPERSON GRIFFIS: Any other questions?

13 MEMBER ETHERLY: Mr. Chair, not so much a question,
14 but you alluded to in some of your dialog with counsel for the
15 applicant, I would be perhaps interested in some guidance from
16 our corporation counsel rep regarding - I mean, I presume this is
17 the perfect purview for the Board in terms of contemplating noise
18 or the type of condition that we're looking at here. That is
19 appropriate for us to consider, correct?

20 MS. SANSONE: Yes, Mr. Etherly, special exception
21 entails looking at adverse effects-

22 MEMBER ETHERLY: Okay.

23 MS. SANSONE: -on the adjacent and nearby properties
24 and noise is certainly one of those potential effects.

25 MEMBER ETHERLY: Thank you, Ms. Sansone. Thank you,

1 Mr. Chair.

2 CHAIRPERSON GRIFFIS: Okay, if nothing else from Ms.
3 Renshaw, we thank you very much.

4 MS. RENSHAW: And thank you, Mr. Chairman and the
5 Board.

6 CHAIRPERSON GRIFFIS: Certainly, and forgive me, it
7 was mentioned, but there is a representative from Council Member
8 Fenty here, if I'm not mistaken, and I just wanted to acknowledge
9 you again, but also ask if you had a statement or anything to put
10 in? Okay, indicating not, we can then move on.

11 Do we have any other - last opportunity for any
12 other testimony persons, in support or opposition at this time.

13 And were you sworn in, ma'am?

14 MS. ANGUS: No, I have not been sworn in.

15 CHAIRPERSON GRIFFIS: Okay. Why don't we do that
16 before you sit down, rather than-

17 SECRETARY BAILEY: Do you solemnly swear or affirm
18 that the testimony you are about to give in this proceeding will
19 be the truth, the whole truth and nothing but the truth?

20 MS. ANGUS: I do.

21 SECRETARY BAILEY: Thank you.

22 MS. ANGUS: My name is Jane Angus. I am a resident
23 of Ingleside. I moved in the first day the apartments were open,
24 and I have been enjoying the neighborhood ever since, and I will
25 fill out two cards.

1 Good morning - I think it's still morning - Mr.
2 Chair and Members of the Board. We also are neighbors of this
3 building that we're discussing today. In fact, we are much, much
4 closer neighbors than those on Military Road or 29th Street or the
5 alley.

6 We are right there, and we would also be concerned
7 about any outrageous noises, because we are a quiet community of
8 retired residents. We also intend to be good neighbors, and we
9 have no desire to have any loud parties or boom boxes, but we can
10 foresee occasions when there might be need of a microphone or
11 some background music for some event, during reasonable hours of
12 the day.

13 And we're concerned that some special limitation
14 should be put on our particular property when we would expect
15 that we - all neighbors would respect each other and respect the
16 conditions of the noise abatement laws and not have special rules
17 imposed by one neighbor upon another in the interest of
18 neighborliness.

19 We wish to respect each other and enjoy the same
20 privileges under the laws, and if the laws were inadequate,
21 perhaps the laws should be changed, and we certainly will do
22 everything in our power to be good neighbors.

23 But I don't see a reason for any special imposition
24 of limitations on this property, and also this was thoroughly
25 discussed at the ANC meeting, which we attended, and the other

1 members of the ANC with full access by any interested parties,
2 declined to impose such a limit. They discussed it at great
3 length, and we appreciate their sensitivity to the situation.
4 Thank you.

5 CHAIRPERSON GRIFFIS: Good. Thank you very much,
6 Ms. Angus. Any questions from the Board? Very well, I assume,
7 Ms. Prince, that there's no cross examination or is - okay.

8 Let me take a quick moment. It's been pointed out
9 to me actually the ANC report was filed late and would require a
10 waiver by the Board, if I can get an order of consensus on that,
11 I think we can waive it in and then again bestow its great
12 weight.

13 I do not believe I'm overlooking anything else that
14 came into the record, and if I am correct, we can go to any
15 closing statements in summary.

16 MS. PRINCE: Just a brief closing statement. This
17 application involves an expansion of the land area associated
18 with the use with no increase in residents or employees.

19 It's a highly restricted use, particularly with all
20 of the conditions that were set forth and approved by the ANC.
21 5121, as you'll note from that aerial photo is at the southern
22 end of the site, far removed from any non-Embassy residential
23 uses and of course, the adjacent Embassies have no restrictions
24 of the nature that's been discussed today, no restrictions on a
25 number of employees - number of attendees at events, no parking

1 restrictions, no nothing.

2 There's no new construction proposed although we
3 definitely need the flexibility to make any changes required by
4 the ADA, and finally, I would like to note that the existing
5 order that governs Ingleside has a clear restriction that noise
6 cannot exceed any of the legal limits in the District of Columbia
7 which is 60 decibels at the property line.

8 I cannot imagine a situation where any noise
9 emanating from this property could reach that decibel level at
10 any of the property lines, but if it did, we'd be in violation of
11 our order and the noise code, and that is one of the reasons why
12 the ANC felt that the existing conditions in the existing order,
13 which will pertain to this order, were adequate to address any
14 noise concerns, and we thank you for your time today, and I would
15 appreciate a decision as soon as you're capable of making one.

16 CHAIRPERSON GRIFFIS: Does that mean before lunch?

17 [Laughter.]

18 Actually, let me see. Board Members, are we ready
19 to proceed on this today? Okay, I think there's an indication of
20 that. Well, then I would be happy to entertain any direction.

21 COMMISSIONER MITTEN: Mr. Chairman, I would move
22 approval of BZA Case Number 16861 with the conditions as proposed
23 by the ANC and accepted by the applicant for this as an accessory
24 use to the existing retirement facility.

25 CHAIRPERSON GRIFFIS: Is there a second?

1 MEMBER ETHERLY: Seconded, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Thank you. Do you want to
3 speak briefly to it, Ms. Mitten, or-

4 COMMISSIONER MITTEN: Yes, and I guess maybe I
5 should focus on the one area of contention, which is the noise
6 issue, and I'm really pleased that Ms. Angus came up and gave the
7 perspective of, you know, really the folks that are going to be
8 most heavily impacted by any kind of noise.

9 And what we have to keep in mind when we're
10 considering special exceptions, whether the use is likely to
11 cause an adverse condition because of noise or traffic or so on,
12 and I think it's very unlikely that the use of this facility is
13 going to cause an adverse impact in the sense that - in the way
14 that that would reasonably be considered, both from the sense of
15 violating the noise ordinance, but also the - you know, the
16 operators of the facility have to be sensitive to their primary
17 focus, which is their own residents.

18 They will not be doing anything that will be
19 offensive to those residents, and I think there - I mean, we've
20 confronted this a number of times in campus plan cases and so on,
21 where there's a sense among some community folks that they
22 shouldn't hear anything from a neighboring property, and that's -
23 as Ms. Prince pointed out, that's not the test that, you know,
24 the abutters are held to - if they have a party in their
25 backyard, that's not the test to which you know, the Embassy

1 properties are held.

2 And while somebody may be able to hear something
3 that's going on, on the Ingleside property, in the event that
4 there is a microphone in use or something like that, unless it
5 exceeds the level of the noise ordinance and unless it's - that
6 we feel that it's going to be something that's done routinely and
7 with large numbers of people, which I just can't anticipate, then
8 I think that the proposal is adequate as it's been put forward
9 and sufficiently conditioned to protect the neighboring property
10 owners.

11 CHAIRPERSON GRIFFIS: Mr. Etherly, did you have
12 anything to add?

13 MEMBER ETHERLY: You caught me kind of leaning, Mr.
14 Chairman. I'll just note in addition, I seconded the motion
15 because I am heartened by the fact that we've received testimony
16 that there was, what appears to be, substantial discussion at the
17 ANC regarding the issue of noise and the ANC, in its deliberation
18 and ultimate conclusion, did not decide to move forward with the
19 recommendation in that regard.

20 While it might have been useful to perhaps receive
21 a little bit of insight from a representative to that discussion,
22 nevertheless had - knowing that the ANC did discuss it at length
23 and decided not to incorporate that into their conditions, gives
24 me some measure of comfort that efforts have been made to a
25 satisfactory extent to address any concerns that might arise in

1 the future regarding uses at that facility. Thank you, Mr.
2 Chairman.

3 CHAIRPERSON GRIFFIS: Good. Thank you. Any others
4 to speak to the motion? I think Ms. Mitten has done an adequate
5 job of doing that, and I think has expressed the fact of all
6 property owners look to a reasonable use of the property.

7 One thing I wanted to add though is that there is
8 actually a release to any problems that come up as was testified
9 to, the Advisory Committee that meets and barring difficulty of
10 time and coordination, I think that's the appropriate place also
11 to bring up concerns.

12 So, if there's nothing else to the motion, I would
13 ask for all those in favor signify aye by saying aye.

14 ALL BOARD MEMBERS: Aye.

15 CHAIRPERSON GRIFFIS: And opposed?

16 SECRETARY BAILEY: The vote is recorded as four,
17 zero, one to approve the application. Mrs. Mitten made the
18 motion; Mr. Etherly second; Mr. Griffis and Mr. Levy in
19 agreement, excuse me. Mrs. Renshaw has recused herself and is
20 not voting on this application, and Mr. Chairman, are we doing a
21 summary order or full order?

22 CHAIRPERSON GRIFFIS: I don't see any problem with
23 doing a summary order unless the Board Members think differently.
24 I think that would be fine-

25 SECRETARY BAILEY: Thank you, sir.

1 CHAIRPERSON GRIFFIS: -unless the applicant wants to
2 request a - seeing not an indicating that they want a full, it'll
3 be a summary.

4 Very good, then that would, if I'm not mistaken,
5 conclude the morning session of April 30, 2002. Thank you all
6 very much and enjoy the day.

7 (Whereupon, the foregoing matter was adjourned at
8 12:18 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:21 p.m.

CHAIRPERSON GRIFFIS: Hearing will please come to order, and I welcome ladies and gentlemen this afternoon. This is, of course, the 30th of April, 2002 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is Vice Chair, Ms. Anne Renshaw. Also Curtis Etherly on my right. Representing the National Capitol Planning Commission is Mr. David Levy, and representing the Zoning Commission this afternoon is Mr. May.

Copies of today's hearing agenda are available to you. They are located at the table where you came into the hearing room.

Please be aware that the proceedings are being recorded. I will give some technical instruction as you come forward. The mike needs to be on, if you're going to speak anywhere in the room. Also, we would ask any refrain from disruptive noises or activities during the public hearing.

When coming forward to present to the Board, of course, we will ask you to introduce yourself, give your name and your address before speaking and giving testimony.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located again at the table where you entered into, and there

1 should be some at the table in front of us.

2 Upon coming forward to speak to the Board, you can
3 fill those out and give them to the recorder, who's sitting to my
4 right.

5 The order of procedure today for special exceptions
6 and variances today, will be first, the statement and witnesses
7 of the applicant; second, will be government reports, any
8 included in the application for the specific cases; third, would
9 be the report from the Advisory Neighborhood Commission; fourth,
10 we will hear from persons or parties in support of the
11 application, and fifth, would be persons or parties in
12 opposition; six, we will have closing remarks by the applicant.

13 Cross-examination of the witnesses is permitted by
14 the applicant or parties. The ANC within which the property is
15 located is automatically a party in the case.

16 The record will be closed at the conclusion of each
17 case except for any materials specifically requested by the
18 Board. The Board and Staff will specify at the hearing exactly
19 what is expected and the date when persons must submit the
20 evidence to the Office of Zoning.

21 After the record is closed, no other information
22 will be accepted by the Board. The Sunshine Act requires that
23 the public hearing on each case be held in the open and before
24 the public.

25 The Board may, consistent with its Rules of

1 Procedure and the Sunshine Act, enter executive session during or
2 after the public hearing on a case for purposes of reviewing the
3 record or deliberating on the case.

4 The decision of the Board in these contested cases
5 must be based exclusively on the public record, and to avoid any
6 appearance to the contrary, of course, we ask that people present
7 not engage Board members in conversation.

8 At this time, I'd ask that everyone turn off their
9 cell phones or beepers, so as not to disrupt the proceedings, and
10 we are starting a little late, and we appreciate your patience.

11 We did end our morning session late and had some
12 work to do during our lunch hour. However, we will, and I do
13 anticipate making every effort to conclude the public hearing as
14 close to 6 p.m. as possible, and of course, if that doesn't
15 happen, I will update everybody on how and - well, how we will
16 proceed with that.

17 At this time, the Board will consider any
18 preliminary matters. Preliminary matters are those which relate
19 to other case will or should be heard today, such as request for
20 a postponement, continuance or withdrawal or whether proper and
21 adequate notice of the hearing has been given.

22 If you are not prepared to go forward today with a
23 case or if you believe the Board should not proceed, now is the
24 time to raise such a matter. Does anyone have any preliminary
25 matters with any of the cases in the afternoon?

1 Not seeing a rush to the table, I will turn to
2 Staff and see if they have any preliminary matters for us.

3 SECRETARY BAILEY: Good afternoon. No, Mr.
4 Chairman, we do not.

5 CHAIRPERSON GRIFFIS: Good. Then, I think we are
6 ready to - yes, let us call our first case in the afternoon then.

7 SECRETARY BAILEY: Application Number 16832 of
8 Metropolis Development Company, LLC, pursuant to 11 DCMR 3103.2
9 for a variance from the public space and ground level
10 requirements under section 633, for a variance from the lot
11 occupancy requirements under section 634, a variance from the
12 private recreation space requirements under section 635 and a
13 variance from the loading berth requirements under section 2201
14 to permit the construction of a mixed-use, that's a residential
15 and retail building in the ARTS/CR District at premises 2045 14th
16 Street, Northwest, Square 236, Lot 17. The property is formerly
17 known as Lots 54, 61 and 812 and an alley.

18 All those wishing to testify, please stand to take
19 the oath.

20 CHAIRPERSON GRIFFIS: Do you want everyone for the
21 entire afternoon or do you want to do that for the second case
22 also?

23 SECRETARY BAILEY: We normally call the case and
24 then swear the witnesses in, because all-

25 CHAIRPERSON GRIFFIS: Sounds like a great idea,

1 let's take it-

2 SECRETARY BAILEY: -may not be here for the last
3 case.

4 CHAIRPERSON GRIFFIS: -case by case then.

5 SECRETARY BAILEY: Okay. Please raise your right
6 hand. Do you solemnly swear or affirm that the testimony you are
7 about to give in this proceeding will be the truth, the whole
8 truth and nothing but the truth?

9 ALL WITNESSES: I do.

10 CHAIRPERSON GRIFFIS: Good. Thank you, and that the
11 applicant is already set up, we have good time, and I do - would
12 like to say good afternoon to Ms. Bailey, our table staff who
13 will be assisting us today; also Ms. Sansone who is with us,
14 Corporation Counsel, and Ms. Pruitt, who has joined us
15 additionally.

16 With that, I think we can turn to you and have you
17 begin.

18 MR. NETTLER: Good afternoon. My name is Richard
19 Nettler. I represent the applicant in this matter.

20 As the Staff has informed you and as you no doubt
21 have seen from the submission that we've made to you, this is an
22 application for four variances, area variances, so as to allow
23 for the development of this site, which is located in the
24 historic - 14th Street historic district.

25 Without belaboring the point and giving a full

1 recitation of the criteria, which I'm sure you're fully familiar
2 with, I think we'll go right into the presentation, and our first
3 witness is Scott Pannick.

4 MR. PANNICK: Good afternoon. My name is Scott
5 Pannick. Members of the Board, I am just going to briefly tell
6 you a little bit of history on the project, and I'm going to tell
7 you just very briefly what it is we're looking to accomplish.

8 MR. NETTLER: And you'll give them your address and-

9 MR. PANNICK: Oh, my name and address. I am Scott
10 Pannick. I am the principle of Metropolis Development Company.
11 My address is 3204 Rowland, R-O-W-L-A-N-D Place, Northwest,
12 Washington, D.C. 20008.

13 The building that we are here to talk to you about
14 today is a building of 78 condominiums and about 7,500 square
15 feet of retail. We have named the building the Langston Hughes
16 Condominiums after the African-American poet of that name. We
17 actually just received permission from the estate within the last
18 couple of days to use Mr. Hughes' name.

19 The history of the site; the site was a site that
20 was bid by La Motta about two and a half years ago. We were the
21 successful bidder predicated on the program of, I think, at that
22 point, approximately 70 condominiums and 7,500 square feet of
23 retail. We've increased the number of condominiums just a few.

24 We started immediately after that award and
25 designed a building that utilized the full FAR of the site. It

1 is CR zoning, and they utilized the full six FAR of the site.

2 In order to do that, we built an eight-story
3 concrete structure building, or were to have built an eight-story
4 concrete structure building. That building was not approved by
5 the Historic Preservation Review Board, and we took the building
6 to the Mayor's Agent and through that process, did receive
7 approval to build an eight-story building.

8 Unfortunately, at the same time, we went through
9 the pricing process on that building and came to the conclusion
10 that the building - a concrete building did not meet the target
11 market that we were addressing.

12 We thought that the cost structure of needing to
13 build a deep-pile foundation on top of the metro tunnels led to a
14 cost point that was not in the program that we had.

15 Our program is to build what we would call
16 economical market rate condominiums. We think that there is a
17 lot of builders out there. Everybody's building luxury, and we
18 concluded that the target market at this location that we were
19 aiming for was not luxury.

20 We think they are smaller units for first-time home
21 buyers, although they have some very exciting features, 11-foot
22 ceilings and there are loft-type of unit and so forth.

23 I will turn the presentation over to Robert
24 Sponseller, our architect from Shalom Baranes Associates, and he
25 can walk through the specifics of the project.

1 CHAIRPERSON GRIFFIS: Let me just interrupt you
2 briefly because I think in the submission that you had part of
3 the structure change and correct me if I'm wrong, had to do with
4 the weight of the building on top of the Metro tunnels.

5 MR. PANNICK: It did. The concrete structure would
6 have required a deep-pile foundation and while it was possible to
7 do it, it was cost prohibitive.

8 CHAIRPERSON GRIFFIS: Okay. Are you going to get
9 further into that, or-

10 MR. PANNICK: Robert?

11 MR. SPONSELLER: I'd be happy to.

12 CHAIRPERSON GRIFFIS: Okay. Because there seemed to
13 be the crux of your argument or-

14 MR. NETTLER: It is.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. NETTLER: It's part of the crux of our argument,
17 but before Robert does testify, I would like to qualify him as an
18 expert in architecture.

19 He's been before this Board before, has testified
20 on a number of occasions, as recently I believe as two weeks ago,
21 I think, and with that, I have a resume of his, which is - he's
22 with Mr. Baranes' firm, and I'll pass that out and give that to
23 you, as well.

24 CHAIRPERSON GRIFFIS: All right, why don't we deal
25 with that first? Unless anyone can recall from their memory

1 last, we'll wait for that document. Board Members, any
2 questions? Any concerns? Thirty more seconds to read it.

3 Okay, if I - would take that as a consensus that we
4 can accept as an expert in architectural design. Not seeing any
5 indication of opposition, I think we can proceed and accept him
6 as an expert witness.

7 MR. SPONSELLER: Thank you. Good afternoon. My
8 name is Robert Sponseller. I'm a principle at Shalom Baranes
9 Associates Architects, and it's nice to see you all again.

10 What I'd like to do is begin by describing-

11 CHAIRPERSON GRIFFIS: We don't often get a comment
12 like that, so let's just relish that for a moment.

13 MR. SPONSELLER: It's sincere, it's very sincere.

14 CHAIRPERSON GRIFFIS: Mr. Levy even missed it, so
15 why don't we rewind the tape and just note that there is somebody
16 testifying before us that is happy to see us again.

17 [Laughter.]

18 MR. SPONSELLER: I'd like to begin by just
19 describing the site to you a little bit. There are two boards up
20 on the easels here. The first is an aerial photo from the
21 southwest, and our site, the Langston Hughes Condominium site is
22 located in the yellow box here.

23 As you can see, it's on the inner section of 14th
24 Streets, which runs north south, and V Streets, and this is a
25 historic U Street area. This is U Street here on our aerial map,

1 and one of the things that's significant about this site, is not
2 only its good exposure on 14th and V Streets, but also the site is
3 bounded by Harrison Park on the east side, and this provides us
4 with a very unusual urban condition, which is a three-sided site,
5 which are very few and far between and are very good for this
6 type of project which is a mixed-use residential building.

7 This type of exposure - this is a federal park to
8 our east - bodes well for the residential use on the site.

9 What I'd like to do is just start talking about
10 some of the overlays that exist on the site. The first is the
11 historic overlay. This project is located in the greater U
12 Street historic district, and as such undergoes Historic
13 Preservation Review, as Scott mentioned.

14 The project that we're showing to you today, which
15 is a 70-foot building has been approved by the Historic
16 Preservation Review Board for concept approval, and the issues
17 that the Board brought up on the project were not only the height
18 of the project, which they actually encouraged us to reduce the
19 height of the building, but also the overall massing of the
20 building, and the way that the building meets the street. The
21 urban context here of traditional row houses and lower scale
22 buildings, which front right up on the street frontage and hold
23 the street wall was very important that that be maintained on the
24 site.

25 The other overlay which is very important is the

1 ARTS district overlay. This is part of the uptown ARTS district,
2 and as such, as you know, the goals of the ARTS district are
3 many, one of which is to encourage a very lively pedestrian
4 street scape.

5 And the way that the ARTS overlay district
6 accomplishes this is by mandatory minimum amount of retail use on
7 the ground floor, in our case, 50 percent of the gross floor area
8 on the ground floor, and also in the stipulation that the
9 building on its frontages come right out to the property line and
10 on the property line provide a certain minimum amount of glass
11 area, so that the retail use is very exposed to the street
12 frontage, and this is very important in our design of the
13 project.

14 The next issue, I want to touch on, is the alley
15 easement which is currently being provided on the site. The
16 existing alley structure, you can see on the plan here, is a T-
17 shaped configuration, which consists of the north-south portion,
18 which runs right through our site and an east-west portion in
19 the middle of the block.

20 We are maintaining access to that alley easement on
21 our project as you can see on the ground floor plan here. The
22 blue area is the alley that we're providing, our owner's
23 providing access through our site to the remainder of the block,
24 the remainder of the square, and we're actually widening the
25 existing 15-foot alley to a 20-foot alley.

1 So that the net effect for us is that it splits our
2 ground floor plate into two parcels, a western parcel and an
3 eastern parcel, but it does provide us a means to service the
4 building from that alley-

5 MR. NETTLER: And was that a condition of the
6 council for closing the alley?

7 MR. SPONSELLER: Yes, it was. So, the last issue I
8 want to touch on briefly is the Metro. The good news about the
9 site is that it's well served by the U Street Cardoza Metro stop.
10 The unfortunate news is that the Metro tunnels run right below
11 the building.

12 The Metro stop is located, as you know, here at 13th
13 and U Streets, and the tunnels proceed northwesterly and cross
14 right underneath our project here on the northwest corner, and
15 these influence the project in a number of ways.

16 The Metro tunnels, first and foremost, as Scott
17 mentioned at the beginning, limit the amount of building mass
18 we're able to put onto the project, and this forces us to
19 consider a massing scheme which spreads out the floor loads of
20 the building above the tunnels and also reduces the amount of
21 height and mass you can put on top of the tunnels, and also
22 encourages a very light construction system used for the project,
23 so that it doesn't overburden the Metro system.

24 Now, as you mentioned earlier, the question about
25 the deep foundations. This is all predicated on not going to a

1 deep foundation system. If we were go to a deep foundation
2 system, we could surcharge the tunnels.

3 We'd be avoiding pressurizing the tunnels, but to
4 hit the price point that Scott is trying to, we're trying to
5 avoid that foundation system which is a very expensive system. I
6 can answer more questions about that, as they come up.

7 So, in the end analysis of the next - the other
8 important issue about the Metro tunnels is that they also require
9 an easement around them, so that although they're about 20 feet
10 below grade, they require a ten-foot buffer around them, which
11 really in conjunction with the height limitations of the
12 construction, forms sort of a compressed building sandwich, if
13 you will, within which we can work with the project.

14 Next, I'd like to walk you through the floor plans-

15 MR. NETTLER: Robert, before you do that, let me ask
16 you some questions. Is there also some air vents that you have
17 to deal with from the Metro as well in terms of-

18 MR. SPONSELLER: Yes, thank you. Thank you. This
19 drawing, which is on the right easel here, shows not only a
20 footprint of the easements which were provided around the
21 tunnels, which we're required to provide and how they sort of
22 slice through our site here, but also these two shafts which are
23 vertical extensions of the tunnels are required to pass up
24 through the building, through the ground floor and out to the
25 alley for ventilation.

1 So, the impact of the tunnels is significant on the
2 project.

3 MR. NETTLER: Could you also just run through again,
4 looking at the design there at the tunnels where they're located
5 as how the - what the north shaft and the other shafts interact
6 with the entire building.

7 MR. SPONSELLER: Okay, it's - I'll go over all the
8 easements actually - to summarize all the easements, in fact, on
9 the site.

10 In the section, I mentioned how the tunnels being
11 about 20 feet below grade have actually an easement envelope
12 which is ten feet above grade. This really reduces our below
13 grade construction to one floor.

14 In addition, these tunnels rise up vertically to
15 the northwest. They slope slightly up from southeast to
16 northwest, and therefore, required a whole series of different
17 slab elevations in our garage, but also significantly, the two
18 vertical ventilation shafts which are attached to these tunnels,
19 it's not shown in this section, but they rise up from the tunnel
20 up to the underside of the second floor and ventilate out to the
21 west to the alley.

22 So, all of these constraints and easements have to
23 be designed around in the project.

24 CHAIRPERSON GRIFFIS: Those vents aren't showing on
25 your roof plan that's there, the site plan, is it?

1 MR. SPONSELLER: No, they don't actually pass
2 through the whole building. They pass up to the second floor.
3 So, I'll show you the vents here on the ground floor. These are
4 the two vents.

5 These two dash lines, which I can think you make
6 out on the plan here, are the extent of the actual tunnels below,
7 and these two vents rise up, one connected to each tunnel. They
8 rise up to the top of the first floor and ventilate to the west
9 to this open alley that we're providing through the building.

10 CHAIRPERSON GRIFFIS: I see.

11 VICE CHAIRPERSON RENSHAW: Do those air shafts carry
12 the noise of the Metro trains?

13 MR. SPONSELLER: Yes, they do, and that's why we're
14 putting, you know, serious acoustics around them. We're putting
15 concrete structures, reinforced masonry walls around these to
16 alleviate any noise leaking into the residential component.

17 It's not that dissimilar from walking over a Metro
18 grade in the sidewalk.

19 Next, I'd like to just sort of walk you through the
20 floor plans and talk about how we've dealt with the design
21 constraints on the project, beginning with the ground floor.

22 As I mentioned earlier, the - really, the
23 provisions of the ARTS space and historic preservation overlay
24 led us to really fill out the site and maximize the amount of
25 building on the ground floor, and we placed the retail portion on

1 the west side here on 14th and V Streets.

2 As you can see, we've taken advantage of the alley
3 easement, which we're providing to allow all of our service for
4 the building to happen off of that alley, and I want to add that
5 the ARTS overlay district also requires that no additional curb
6 cuts or service routes be through the pedestrian sidewalk be
7 provided.

8 So, we're really taking advantage of that alley
9 easement that we're providing, but the result of that alley
10 easement is that this eastern portion which you can see here is
11 completely isolated and cut off from the main retail portion of
12 the plan.

13 That really leaves this is as a non-viable retail
14 portion because it has no exposure on the primary street
15 frontages, so we've placed our residential use here, which is
16 two-story townhouses, accessed off of a public park here on the
17 east side, and I'll get to one of the variances about that issue
18 in a moment.

19 Up above this ground floor-

20 CHAIRPERSON GRIFFIS: Actually, before you move off
21 that sheet, on the bottom side of that, the south of side of 14th
22 Street, there's the white portion that isn't colored, that's
23 within the building envelope, correct?

24 MR. SPONSELLER: No, this actually is a neighbor's
25 property. The heavy black line that you see here is the extent

1 of our site.

2 CHAIRPERSON GRIFFIS: Oh, right, indeed.

3 MR. SPONSELLER: Okay, so we've filled the entire
4 portion of the site with either retail, residential lobby,
5 services, the alley easement and our residential portion on the
6 east, we've left a 17-foot rear yard, as required by zoning on
7 the east side.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. SPONSELLER: Other than that, we've responded to
10 this incredible pressure on the project, if you will, from below,
11 from above and maximized our coverage on the site.

12 CHAIRPERSON GRIFFIS: Okay. So, on that end, you're
13 ramping down below the retail. It's a little bit shorter than-

14 MR. SPONSELLER: That's right.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. SPONSELLER: This is the ramp to the residential
17 parking level below.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. SPONSELLER: Okay. Next, I'll show you the
20 typical residential floor plate above, and this is - it's an L-
21 shaped bar of residential, if you will, with a double-loaded
22 corridor portion here, and a single-loaded portion facing the
23 park.

24 These units that face the park, by the way, have
25 about a 300-foot expanse to the east of open space which they

1 overlook. The V Street and 14th Street frontages also have about
2 100, 110 foot of right aways that they look onto, so the building
3 works quite well as residential use.

4 On the south portion of the parcel, I think this is
5 what you were getting at, we provided a small courtyard here,
6 which on the second floor is the location of our residential
7 recreation space.

8 This space is about 30 feet wide and 120 feet long,
9 and above that floor, we have four of these that repeat
10 themselves, stacked vertically for a section, which you can see
11 here. The ground floor plan with the retail and the alley, four
12 levels of residential and one level of parking below.

13 This plan shows the B-1 parking level, which you
14 can see fills - again fills the site. The two Metro shafts that
15 I mentioned earlier, come through it as well, and they're shown
16 here.

17 Next, I'd like to just talk to the variance issues
18 that we're requesting assistance on. The first of these is the
19 provision for public space.

20 In the CR zone, there is a provision that requires
21 ten percent of the site area be left as public space. Now, this
22 is about 2,200 square feet of space and it's further required
23 that it be provided near the main entries to the building, which
24 would put it somewhere up on 14th Street or V Street along those
25 primary frontages.

1 Now, this provision is in direct contrast to the
2 sort of guiding principles of the ARTS district, which require,
3 you know, buildings coming out to their fronts, maintaining the
4 street walls on the two sides, et cetera.

5 If, in fact, we did provide that public space, we'd
6 be in need of a variance on our retail space provided, so that
7 was the first - that's the first issue.

8 The second issue is - has to do with lot occupancy,
9 and in a residential use in this zone, we're required to provide
10 no more than 75 percent lot occupancy on a site.

11 Now, above the ground floor plan, our typical
12 residential floor plan is at about 72 percent lot occupancy. So,
13 we're within zoning on Levels two through five, if you will.

14 The issue that we need relief on is on the ground
15 floor at the use that I mentioned that are accessed off of the
16 garden to the east along the park.

17 This is - again, on this level, we have - because
18 we're on the ground floor, and because we're leaving the alley
19 open, and we're trying to maximize our retail, our lot occupancy
20 is about 85 percent on this floor, so we're over the 75 percent.

21 Again, I feel that because this project is a three-
22 sided site, and these units actually face onto a 300-foot open
23 space to the east, that the genesis behind the lot occupancy is,
24 as you know, is light - sort of getting light in there into the
25 units. I feel like we've satisfied that requirement for the

1 project, by virtue of the fact that we're on a park.

2 The third issue I'd like to go over with you is the
3 residential recreation space. On a project of this size in this
4 zone, the requirement is that 15 percent of the gross residential
5 be provided as rec space.

6 And our provision for recreation space is on the
7 south side of the building, on the second floor located here, and
8 we're providing five percent of our gross residential area as
9 recreation space.

10 This is in line with what the downtown development
11 space has recently been changed to, and we're providing the space
12 in the second floor courtyard here in the south of the project.

13 This is accessible to all of the residents via the
14 core here and is open to the sky in keeping with the provisions
15 of zoning, but it is about one third of the required.

16 CHAIRPERSON GRIFFIS: So, if your calculation are
17 correct, in order to comply with the zoning, you'd need about ten
18 thousand, over ten thousand square feet of residential
19 recreation-

20 MR. SPONSELLER: You'd need - I think it's 10,800
21 total. We're providing 2,600-

22 CHAIRPERSON GRIFFIS: Okay let me get precise. It's
23 10,800 indeed-

24 MR. SPONSELLER: 2,600.

25 CHAIRPERSON GRIFFIS: -but if you added theat, then

1 how much square footage would it be for the public space also?

2 MR. SPONSELLER: The public space is 2,200, so the
3 total would be - I guess that's 13,000 between the two. The
4 additional rec space, you know, would - again, because we are -
5 we have a limited envelope here of four stories, we're really
6 trying to maximize the residential on every floor.

7 We are not at all near the maximum FAR on the
8 project, as you know, we're at about 66 percent of the total FAR
9 allowable. So, any additional recreation space would come right
10 out of our residential that we're providing on the project.

11 CHAIRPERSON GRIFFIS: Well, actually, if you were to
12 provide the - isn't it true that if you provide the residential
13 recreation space and the public space, you would essentially
14 eliminate the retail space?

15 MR. SPONSELLER: Depending on where you did it, you
16 would take out a good portion of the retail - as I mentioned
17 earlier, we'd be here with another variance issue if we provided
18 the public space. We wouldn't have enough retail, so it's a
19 swap, it's a choice.

20 On the rec side, residential recreation space side,
21 we could - you know, we could cut into our residential space. It
22 seems contrary to the provisions of the ARTS overlay and again,
23 we're way below our FAR on the project overall.

24 MR. NETTLER: And is the fact that there - you're
25 not meeting the 15 percent requirement - by the fact that you've

1 got the park that's-

2 MR. SPONSELLER: Yes, I was going to the fact that
3 again, in this ARTS district, the purpose of the ARTS district is
4 to encourage residential activity - I'm sorry, retail activity
5 and street scape activity.

6 We face - we're adjacent to a park, a public park,
7 which is federally owned, and I think there's good justification
8 for assuming that the residents would use that park or be out on
9 the street for some of that recreation space.

10 CHAIRPERSON GRIFFIS: Are there any other parks
11 close by to this property that you know of?

12 MR. SPONSELLER: Not-

13 CHAIRPERSON GRIFFIS: I'll give you a hint; how
14 about Meridian Hill, isn't that a walk-

15 MR. SPONSELLER: You could say that's a walk, sure,
16 that's a short walk.

17 CHAIRPERSON GRIFFIS: Okay. It's a nice park, too,
18 actually.

19 MR. SPONSELLER: Nice park-

20 MR. NETTLER: A little larger park. Is there - also
21 why couldn't you put the residential recreation space on the
22 roof, or could you?

23 MR. SPONSELLER: Given the constraints of the Metro
24 that I mentioned earlier, this is where that comes into play a
25 little bit.

1 The construction type that we're using on this
2 project, because we're trying to minimize the weight of the
3 building and avoid going to a deep foundation system, and by that
4 I mean drilling case-ones down adjacent to tunnels, to get below
5 the elevation of the tunnels, we're instead providing a slab-on
6 grade, if you will; it's actually a mat slab above the tunnels,
7 which disperses the load above the tunnels and is limited then
8 because the limiting factor, because you can only put so much
9 weight on top of those tunnels; you can only surcharge them so
10 much.

11 It additionally puts extreme pressure on the
12 construction system that you use. Instead of using a
13 conventional concrete system, a very common system in Washington
14 with block walls and brick and all that, we're using a light
15 gauge metal system - metal-framing system with light gauge floor
16 construction, and this greatly reduces the weight of the building
17 and helps us with our issues of the mat and the transference over
18 the tunnels.

19 However, it does not allow us to put very easily
20 more residential recreation space on the roof. The system just
21 can't support that additional load.

22 The sizing of the structural system, the extension
23 of the elevators and the stairs to that roof, would greatly
24 increase the price of the project, and again, the owner's trying
25 to deliver a product here at a sort of starter-house price level,

1 fair to say.

2 The last variance issue is the loading - 55-foot
3 loading dock issue. In this zone, we're required to provide one
4 20-foot bay, one 30-foot bay, and because we have over 50 units
5 in the building, one 55-foot loading berth. Now, I have to say
6 that you're required to provide that berth whether you have 50 or
7 500 units, and that this project, being a condominium project on
8 the small end of the scale, 78 units just over the provision that
9 requires the 55-foot berth, I think helps ameliorate that.

10 Condominium buildings, typically, do not have such
11 a high turnover of unit sales as rental buildings. That helps
12 ameliorate the subject a little bit, and the provision of the 55-
13 foot berth, we did a drawing that shows the impact on the plan of
14 providing that berth, is also very significant.

15 This drawing shows these big arcing sweeps here of
16 a turning radius of a 55-foot truck coming into the site, and you
17 can see that the impact of the loading area in terms of the
18 retail compared with our base scheme here is significant.

19 It takes out some of our retail parking, it reduces
20 our retail even further, and is actually - doesn't even really
21 work in terms of the turning radii of the truck. It would be
22 possible, but extremely difficult to provide this 55-foot berth
23 off of the alley in this location.

24 CHAIRPERSON GRIFFIS: Now, your application speaks
25 to this, but for board clarification, the 55-feet are assumed to

1 be for moving in and moving out.

2 MR. SPONSELLER: Residents, right.

3 CHAIRPERSON GRIFFIS: Now - and you made the case -
4 and you've just stated it again, that with condos there's less of
5 that turnover.

6 I - what I didn't see, and I don't know if you're
7 going to speak this, but are you also testifying to the fact that
8 the smaller size of these units have somewhat-

9 MR. SPONSELLER: Yes. Yes, thank you. The average
10 unit size in this building is about 750 square feet. In order to
11 hit the price range that the owner's trying to hit, the units are
12 smaller.

13 They range from 600 to our largest unit is 1,000
14 square feet, and that's definitely on the small side in
15 Washington for an average unit size. So, I think-

16 CHAIRPERSON GRIFFIS: What's the square footage of a
17 55-foot truck-

18 MR. SPONSELLER: Well, actually - actually we did
19 that calculation.

20 CHAIRPERSON GRIFFIS: Did you?

21 MR. SPONSELLER: Yes, well, it's very close.

22 CHAIRPERSON GRIFFIS: What is it?

23 MR. SPONSELLER: So, the point is a 30-foot truck
24 should suffice for the loading. A 55-foot truck is about 450
25 square feet in plan.

1 CHAIRPERSON GRIFFIS: I see. Just in plan, but-

2 MR. SPONSELLER: Just in plan, just in terms of this
3 plan. Now, you can stack things obviously in the truck, so-

4 CHAIRPERSON GRIFFIS: Right, right.

5 MR. SPONSELLER: So, these factors taken together
6 the fact that we're really forced to do all of our servicing off
7 of this alley because we're in the ARTS district, and we're
8 trying to preserve our store fronts, there's a very high design
9 standard.

10 The fact that the building is small unit typical
11 700 square foot in size, a condominium building which can
12 restrict loading times to certain periods and is much more
13 infrequent than a rental building, and just the logistics of
14 getting the 55-foot truck into that alley in a manner it that
15 would actually work, make this issue a difficult one.

16 Those are the extent of the variances, and I'd be
17 happy to answer any questions.

18 MR. NETTLER: Well, before you do, why don't you
19 answer some of my questions first. Given the unique conditions
20 that you've just alluded to and the practical difficulties as
21 well, do you - in your opinion, does this have an adverse impact
22 on the purposes, integrity or integrity or intent of the zone
23 plan?

24 MR. SPONSELLER: No, I think it reinforces the plan,
25 keeping the - all of the servicing off of the alley in a manner

1 that actually works, so that you won't have a truck shimmying in
2 and out of this space for six hours, as it tries to get in and
3 out.

4 Actually, having a viable 30-foot space, I think,
5 is much preferred, and it does not adversely affect the plan.

6 MR. NETTLER: And is that true with all - with the
7 other three area variances that are being sought?

8 MR. SPONSELLER: I think in - let me just go through
9 them. In terms of the public space, that is in direct, I think,
10 contradiction to the purposes of the ARTS overlay, historic
11 character of the neighborhood. It is a slight anachronism in my
12 mind. I think that is easy to dispense with.

13 The recreation space, I think, in terms of
14 providing a minimum amount, five percent which is in line with
15 what the DD overlay has recently been reduced to, downtown, five
16 percent is the requirement, I think, is sufficient and should
17 help to encourage the ease of the retail in the neighborhood, and
18 the fact that we're against the park.

19 And the recreation space, I think, is actually the
20 easiest, I'm sorry, the - lot occupancy is the easiest because of
21 the three-sided nature of the site, and the fact that our units
22 on the east side have perhaps the best exposure on the project.

23 MR. NETTLER: Well, let me ask you another question,
24 because you mention the fact that there - some of the limitations
25 - some of the pressures on this project are this price point in

1 terms of what's being proposed for the use, but if you look at
2 what the matter of right zoning would permit on this site, 90-
3 foot building, the FAR that it would allow, you would still have
4 to obtain some of the area variances, even if we do a matter of
5 right zoning, correct?

6 MR. SPONSELLER: You would absolutely here for the
7 public space variance, the rec space variance, and I guess the
8 lot occupancy variance I'm not sure about, but the three of the
9 four. The only one I think you might not be necessarily required
10 to do is the lot occupancy variance. You'd need the loading
11 berth, the public space and the recreation space.

12 MR. NETTLER: So, if you then add in the historic
13 district considerations and the position taken by the Historic
14 Preservation Review Board as well as the Mayor's Agent in at
15 least overturning part of that decision, you wouldn't be able to
16 develop it to its full extent; you'd still have limitations on
17 where you can develop it-

18 MR. SPONSELLER: That's correct.

19 MR. NETTLER: -that aspect of it.

20 MR. SPONSELLER: Right, right.

21 MR. NETTLER: So, it's a combination - so in
22 conclusion then, wouldn't it be, that it's a combination of all
23 of those factors, that whether you were trying to building
24 something that was - had a particular price point for a
25 particular type of use or whether it was a building that tried to

1 take advantage of as much as it could under the zoning
2 regulations, you still would be here trying to think-

3 MR. SPONSELLER: I think to summarize it another
4 way, the biggest difference would be that you could do the more
5 expensive building and maximize your FAR and that would be the
6 difference, you'd have a bigger building on the site. You'd
7 still need the same variances in the end. It would just be more
8 FAR.

9 MR. NETTLER: Thank you.

10 CHAIRPERSON GRIFFIS: Good. Board questions? Come
11 on, we can't be that clear on it, right?

12 Okay. I want to talk about site plan, actually.
13 If you would just walk me through, because I think it's a little
14 confusing in terms of the application and statements that were
15 made in terms of the circulation of traffic out to U Street.

16 Now, we're aware obviously of - how do I
17 characterize it - oh, potential project, the Ellington right
18 there, correct. Now, the alley that comes through on your site,
19 the easement, does that go directly straight through north south?

20 MR. SPONSELLER: Yes, this alley would be exactly as
21 you see it today, with the exception that we're actually widening
22 it five feet-

23 CHAIRPERSON GRIFFIS: You're widening it under your
24 property?

25 MR. SPONSELLER: Under our property-

1 CHAIRPERSON GRIFFIS: Not to connect it to U Street,
2 though?

3 MR. SPONSELLER: To the full extent of our property,
4 it's being widened, not beyond our property.

5 CHAIRPERSON GRIFFIS: Right, yes.

6 MR. SPONSELLER: Okay. This would make it -
7 continue its availability to everybody in the square, basically.
8 It's got a certain vertical clearance that is required as well.

9 CHAIRPERSON GRIFFIS: Sure, 14 feet, I think-

10 MR. SPONSELLER: Yes, yes.

11 CHAIRPERSON GRIFFIS: Is there an east west vehicle
12 entrance in between right off of your property site along the
13 Harrison Park?

14 MR. SPONSELLER: There is an east west leg to the
15 alley system, if that's what you mean-

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. SPONSELLER: -here, which is actually 30 feet
18 wide, which will be maintained-

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. SPONSELLER: -and I think what's being planned
21 with the Ellington, and correct me if I'm wrong on this, is that
22 the alley leg that used to be in the middle of their property, is
23 being pushed to the western side of the property.

24 CHAIRPERSON GRIFFIS: Okay. Ms. Renshaw?

25 VICE CHAIRPERSON RENSHAW: Yes. I would like to ask

1 Mr. Sponseller to just take the red pen of his - the red lit pen
2 and just north south on the alley system please. Okay, it's-

3 MR. SPONSELLER: Our building covers up a portion of
4 that in this plan, but it's basically directly below the building
5 here and then to the south. That's one leg of the T.

6 VICE CHAIRPERSON RENSHAW: Okay. So, when you're
7 say that you're maintaining the alley easement, it means that
8 you're keeping the alley system?

9 MR. SPONSELLER: That's right. We're providing an
10 easement to maintain the alley structure to remain, vertically
11 and in plan.

12 VICE CHAIRPERSON RENSHAW: All right.

13 CHAIRPERSON GRIFFIS: So, potentially, any other car
14 accessing that alley system can drive through all the way out.

15 MR. SPONSELLER: No change, right. None of our
16 project, there's no gates, there's no screens. It's - part of
17 the easement is 24/7 access and we will not be closing it off as
18 well.

19 CHAIRPERSON GRIFFIS: And the easement is given back
20 to the district for that purpose, isn't it?

21 MR. SPONSELLER: Right, yes.

22 CHAIRPERSON GRIFFIS: Other questions? You're
23 talking about the potential - the rooftop recreation space and
24 obviously you've made a structural argument, and then is that -
25 that's based on - there's an additional requirement for structure

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1 for that type of use on the-

2 MR. SPONSELLER: Yes, what happens in that case, if
3 we were to provide rooftop access, is there's a certain building
4 code assembly requirement be provided, and that's roughly one
5 occupancy per every three square feet, which is a very
6 considerable loading onto the system.

7 What we need to do in order to provide that is not
8 only reinforce our structure wherever that terrace was provided
9 with steel or concrete or some other system in addition to our
10 light gauge metal system, but we'd also have to extend up the
11 life safety egress system and both of our elevators, and what's
12 interesting about that is the elevators that we're providing in
13 the building are Fogg elevators.

14 Those have a certain limitation on the amount of
15 vertical run they can do, so we'd be into traction or electric
16 elevators, which would all - all of these things taken together,
17 become a very significant charge-up to the project.

18 CHAIRPERSON GRIFFIS: So, assembly use is a higher
19 demand structurally than the residential, just because-

20 MR. SPONSELLER: Yes, yes.

21 CHAIRPERSON GRIFFIS: Okay. And did you have any
22 schemes that you showed HPRB or any of the historic reviews of an
23 additional penthouse structure on the building?

24 MR. SPONSELLER: A penthouse structure for?

25 CHAIRPERSON GRIFFIS: Well, in terms of bringing

1 elevators up for rooftop-

2 MR. SPONSELLER: Well, we have a penthouse structure
3 - that-

4 CHAIRPERSON GRIFFIS: No, I know you have-

5 MR. SPONSELLER: Yes.

6 CHAIRPERSON GRIFFIS: The penthouse that's attendant
7 to your elevator-

8 MR. SPONSELLER: We did not review the possibility
9 of extending up the additional elevator and stairs with them yet.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. NETTLER: And, in fact, wasn't it the position
12 of the HPRB that they did - the HPRB would not approve a building
13 that was above 70 feet?

14 CHAIRPERSON GRIFFIS: Including the penthouse?

15 MR. NETTLER: Not with regard to the Mayor's Agent,
16 but wasn't that HPRB's position?

17 MR. SPONSELLER: To be honest, I know 90 was too
18 tall. I think that their height limit was somewhere between 70
19 and 80, I don't want to say that it was actually 70.

20 CHAIRPERSON GRIFFIS: Okay. All right. It's not
21 critical to what we're doing today. I was just interested in
22 seeing if you-

23 MR. SPONSELLER: I don't think - to be honest, I
24 don't think it's as much an HPRB issue as it is just a logical
25 issue for us architecturally for the project, structurally and

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1 architecturally.

2 CHAIRPERSON GRIFFIS: Right. Okay. Anything else?

3 I certainly appreciated the history of the neighborhood,
4 especially with the street cars running up 14th Street. I don't
5 know if anyone else is going to speak to that.

6 MR. NETTLER: Well, I could, Ms. Ike is here, if you
7 wanted that additional history, she was the person who was
8 responsible for doing the work on creating the historical
9 district, but I did want to have at least Mr. Workosky give you
10 some additional information that you might find useful in terms
11 of dealing with the 55-foot loading dock that he had done in
12 terms of analyzing from a traffic and parking and loading
13 perspective.

14 CHAIRPERSON GRIFFIS: Yes, let me - before you -
15 come on up and get ready, but are there are other questions of
16 the architect while we have the drawings ready? Okay.

17 MR. NETTLER: And I had previously provided you with
18 a copy of both his report and his resume, and I would also like
19 to qualify him as an expert in traffic and parking engineering-

20 CHAIRPERSON GRIFFIS: Okay. I will ask the Board
21 just to re-review that. Let me - Mr. Nettler while we have that
22 and while the Board is looking at it, let me just make sure as we
23 progress in this that the figures that we're looking at are
24 actually exact or what's being looked at.

25 I appreciate, frankly, the general conversation and

1 testimony of the variances requested, but when we get down to it,
2 you'll have the exact numbers. For instance, 86 percent of lot
3 occupancy is what we're looking at.

4 MR. NETTLER: Right. Nothing has changed since the
5 submission.

6 CHAIRPERSON GRIFFIS: Okay. So, what's in here is
7 what we're looking at. Okay. Board Members, we have a request
8 for expert witness.

9 MR. NETTLER: That's tab D to the Pre-Hearing
10 Statement.

11 CHAIRPERSON GRIFFIS: That's - indeed.

12 MR. NETTLER: And his resume is Tab F.

13 CHAIRPERSON GRIFFIS: Board, any questions,
14 comments, any opposition to having this expert witness? Well,
15 then we can bestow the great honor of being an expert witness.
16 Wait, Ms. Renshaw may object.

17 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'm just
18 doing for review of - this is - I'm looking at Mr. Workosky-

19 MR. WORKOSKY: Workosky, yes.

20 VICE CHAIRPERSON RENSHAW: Workosky - would you just
21 outline for us the work that you've done in the District? On the
22 microphone, please.

23 MR. NETTLER: Why don't you give your name and
24 address before you do that?

25 MR. WORKOSKY: My name is Mike Workosky. I'm a

1 traffic engineer and a principle at the firm of Wells and
2 Associates. Our business address is 1420 Spring Hill Road,
3 McLean, Virginia.

4 I've been involved in a few other projects with the
5 Hoffman Company as well. Also in Tenley Town as part of the
6 project there that was quite controversial.

7 Our firm's also engaged with the Kennedy Center and
8 several other square projects in the city. I have about 13 years
9 of traffic engineering experience in this type of design of
10 loading facilities and all types of development, ranging from
11 residential to large malls across the country from here to
12 California.

13 VICE CHAIRPERSON RENSHAW: I was specifically
14 interested in what you've been doing in the District.

15 MR. WORKOSKY: Well, two of the projects, 1421 P
16 Street was one of the projects that we've worked on recently that
17 I can think of; the Tenley Town project which was - it ranged
18 from 20-some to 14 residential units. I was involved in the
19 traffic analysis for that project as well.

20 MR. NETTLER: Was that before the Zoning
21 Commission?

22 MR. WORKOSKY: Yes.

23 VICE CHAIRPERSON RENSHAW: Thank you.

24 CHAIRPERSON GRIFFIS: Okay, Ms. Renshaw, did you
25 want to give any opposition-

1 VICE CHAIRPERSON RENSHAW: No, I just wanted it
2 outlined for the record of his background in District projects,
3 and I would accept his credentials for being an expert witness.

4 CHAIRPERSON GRIFFIS: Okay. I don't see any - I
5 think the other note is that past employment history, actually,
6 includes Gross Slade, also, which this Board is very familiar
7 with in terms of their studies.

8 So, not noting any opposition, I think we can
9 accept him as an expert witness and have you continue.

10 MR. WORKOSKY: Okay. From our perspective on this
11 project, our approach was to look at the need for the loading bay
12 from two points of view; one was geometrically and what would
13 physically need to happen to accomplish that, and also from a
14 practical usage standpoint.

15 What you see here and what's included in the report
16 that you have are some truck-turning diagrams. These represent
17 the swept path diagram of a 55-foot trailer, which is known as a
18 WB-50 design vehicle, which refers to the wheel base of the
19 truck.

20 Essentially, it's a tractor trailer with an
21 articulated cab that the cab can swing out versus the back end of
22 the truck, if you will.

23 What we looked at were several iterations of how a
24 truck could physically enter and exit the site and get to the
25 loading dock, and what we found through all of these diagrams is

1 that we are exceeding either the curb lines or we're impacting
2 the building itself structurally.

3 I've worked with the angle of the loading dock. I
4 tried to move it as many different ways as I could to try and
5 minimize that impact.

6 Several of the diagrams that you see I've tried to
7 minimize the number of backing maneuvers. As an example here-

8 CHAIRPERSON GRIFFIS: Is it pretty clear to all the
9 Board Members? You can see that diagram? Okay. I think we can
10 get through this pretty quickly. It looks like you're going to
11 slam into your building.

12 MR. WORKOSKY: I'll just show you as an example, if
13 you can imagine how this works, we use a program that's called
14 Auto Turn. It's a cad-based program. It allows us to diagram
15 the physical movements of a truck, and then those movements are
16 simulated.

17 What you see here is just a printout of that
18 simulation of a swept-path diagram, including where the mirrors
19 and such would stick out about two feet on each side of the
20 truck.

21 If this is the position that the truck is in the
22 beginning, what we find out is when he needs to back up; it seems
23 very simple, he could back to here and pull forward, but what you
24 find out is with a WB-50, they need extra room because when they
25 pull forward, they need room to actually align themselves. That

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1 takes a certain amount of space to do that.

2 So, I won't go into gory detail of every single one
3 of these. The bottom line on geometric requirements is that
4 entering would be very difficult. I needed 20 tries to get this
5 diagram. A person, a real driver would probably need three or
6 four more backups than this to get in.

7 CHAIRPERSON GRIFFIS: Okay, and the impact and the
8 difficulty there wouldn't be less and/or mitigated by moving the
9 loading dock perhaps up towards V Street or down towards the
10 other extent.

11 MR. WORKOSKY: That's correct, and-

12 CHAIRPERSON GRIFFIS: And how wide is V Street?

13 MR. WORKOSKY: V Street has parking on both sides
14 and a 15-foot travel. I think it's about 40 feet, roughly from
15 curb face to curb face.

16 CHAIRPERSON GRIFFIS: And is it two way?

17 MR. WORKOSKY: No, it's one way, going westbound.
18 There's curb parking on both sides. These lines I've drawn here
19 are just representative lines of where the curb parking would be.

20 CHAIRPERSON GRIFFIS: So continue the right - the
21 only way that truck can actually even get close to what you're
22 trying to diagram is to actually turn into the adjacent alley on
23 the north?

24 MR. WORKOSKY: Correct. What I tried to do is-

25 CHAIRPERSON GRIFFIS: Where hopefully, everyone's

1 legally parked, so no one's blocking that?

2 MR. WORKOSKY: I tried to get it as far as to be
3 aligned to get into the space as I could, and you can see that
4 any sort of alignment there forces him into the building. I've
5 tried to minimize the amount of impact on this side, obviously,
6 and-

7 CHAIRPERSON GRIFFIS: How wide would the alley under
8 the building have to be widened to accommodate a 55-foot truck?

9 MR. WORKOSKY: Well, you'd probably need to come
10 over another 10 or 15 feet on one of the sides, because as the
11 truck comes back, and his backing maneuver, you can imagine that
12 the cab turns - the cab turns as the rest of the truck swings
13 out, and so what you see is an arc that would look something like
14 this, that he would need to do to actually physically get into
15 the space. So, you would severely impact the east side of the
16 building.

17 VICE CHAIRPERSON RENSHAW: Your truck traffic then
18 would come from the south off of U Street?

19 MR. WORKOSKY: Well, he could use the alley. It's
20 15 feet to the south of the 20-foot section. My sense would be
21 they would use the alley and back in, in that fashion and exit
22 out to V Street this direction to the west, and we've also tested
23 some exiting maneuvers which are also in the group there.

24 Each one of those maneuvers we either impact both
25 sides of the curb, one side of the curb, or into the curb parking

1 that's on the north side.

2 In other words, if a trailer did get into this
3 position, and he was coming out, the driver reaches this point
4 and needs to turn out onto V Street, if he does not want to
5 impact this curb on the eastern side, he would be into the curb
6 parking on the north side of the V Street, just because the
7 turning radii is so large.

8 If we kept - if we held the eastern side and we
9 allowed him to turn - to try and make into what is the effective
10 travel lane, which is one lane westbound, he would impact the
11 western corner of the intersection, where his tires would exceed
12 the curb and go across.

13 MR. NETTLER: You couldn't drive in from V because
14 there would be no way to then back up into the loading dock,
15 correct?

16 MR. WORKOSKY: Correct. The only way to do that
17 would be the loading dock would have to be on this side, or it
18 would have to be - it would be opposite what we see here. So, it
19 would change the layout of the building itself.

20 MR. NETTLER: And the air shaft is on the other
21 side, so you can't put the loading dock on that side, correct?

22 MR. WORKOSKY: Right, in both of these locations.

23 MR. NETTLER: Right. Now, did you do some analysis
24 of comparable buildings with the same types of uses and their -
25 and how - whether or not they do use - necessity for using a 55-

1 foot loading dock for those buildings when you're looking at this
2 one?

3 MR. WORKOSKY: Yes. What our second approach to
4 this was, what's the practical usage of a 55-foot loading bay.
5 We understood and you've heard from Robert the size of the units
6 and the turnover rate of those units. Essentially, what we did
7 was went to some of the comparable condo buildings that are in
8 the general vicinity.

9 There were six buildings that were nearby that we
10 spoke to the management there; we looked at the building; we
11 asked some questions about the turnover rates, how moves are
12 made; if they have large truck traffic and how that impacts the
13 street system, but generally, what we found were there's pretty
14 low turnover in condominium units versus apartment units, where
15 there may be one or two moves a month or roughly 10 to 12 units
16 in a year, which is a pretty low turnover rate.

17 Those moves are scheduled at nearly every one of
18 the sites that we surveyed, which basically during business hours
19 and they cited - each one cited the presence of a tractor trailer
20 showing up as a rare occurrence.

21 Now, if you're moving from California, and you're
22 part of another group of people that are moving, you know, that
23 might be a case where a tractor trailer would arrive at the site,
24 but just from our experience of these surveys and talking to the
25 various locations, it's not apparent to us that this would

1 present a big problem, not providing that space.

2 I guess to follow up on the - just on the geometric
3 site quickly, we did show-

4 CHAIRPERSON GRIFFIS: Before you - before you go off
5 the comparison, I thought I had seen, and correct me if I'm
6 wrong, do you have the listing of the exact other condo buildings
7 that you looked at for comparison?

8 MR. WORKOSKY: They're not listed in the report. I
9 summarized them, but they vary just in the areas themselves,
10 which are - you know, within walking distance of the site,
11 essentially. We just started a radius to go out and just survey
12 as many as we could get.

13 MR. NETTLER: Do you recall any of them in
14 particular?

15 CHAIRPERSON GRIFFIS: Were any new construction?

16 MR. WORKOSKY: No, I don't believe so. Let's see,
17 we were at 1701 16th Street, that was one of them. I did have the
18 addresses here.

19 CHAIRPERSON GRIFFIS: We can just - why don't you
20 just put that in?

21 MR. WORKOSKY: Basically L Street, New Hampshire,
22 2013 New Hampshire, 1701 16th, 1630 R, 1615 Q, 16th and Rhode Island
23 Avenue, and I do have the names of those as well.

24 CHAIRPERSON GRIFFIS: Okay. All right, that's fine.

25 MR. WORKOSKY: All right, just to finish up on the

1 geometric side, we did test the 30-foot loading bay, and I
2 believe that's part of this as well. We tested both maneuvers.

3 The reason why I've shown these separately is that,
4 first of all, it's easier to read, but conventionally when we
5 used to test truck-turning movements, we simply had templates
6 that were overlaid, and we could maneuver those templates.

7 However, they weren't very good for backing
8 maneuvers. So, the newest program that allows you to do that is
9 - recognized is the nuances of a back maneuver versus an exiting
10 maneuver, if you will.

11 Under both those conditions, you can see that a 30-
12 foot truck can simply pull forward and in one swing, basically
13 make it into a space without impacting the parking space or the
14 20-foot bay that's adjacent to it.

15 The exiting maneuver, very similar, you can see
16 that he can pull out of that space, just make it between the
17 eastern side of the building and out through the driveway, out
18 onto V Street into the travel lane and not impact the parking on
19 either side of the street.

20 These are fairly conservative and assume that they
21 make this in one movement. What it doesn't account for very well
22 is if they slowed down to almost a stop and really turned the
23 wheel, they'd be able to make these maneuvers if they inched
24 themselves along in some places.

25 So, it assumes a fairly smooth speed throughout the

1 whole maneuver. So, it is conservative in that sense.

2 CHAIRPERSON GRIFFIS: Okay. And just note for the
3 record that this is part of the submission in Appendix D of all
4 the diagrams that you've been pointing out. Ms. Renshaw,
5 question?

6 VICE CHAIRPERSON RENSHAW: Yes. I'd like to know if
7 you are planning to support or advocate a one-way alley system
8 since the truck traffic is going to be going north into the
9 alley. Is that alley capable of two-way traffic?

10 MR. WORKOSKY: Twenty feet is wide enough for two-
11 way traffic.

12 VICE CHAIRPERSON RENSHAW: There won't be a light at
13 that alley opening.

14 MR. WORKOSKY: That's correct.

15 VICE CHAIRPERSON RENSHAW: And there's no light at V
16 Street and 14th, is there?

17 MR. WORKOSKY: There is.

18 VICE CHAIRPERSON RENSHAW: There is, thank you.

19 MR. WORKOSKY: There's a traffic signal here.

20 VICE CHAIRPERSON RENSHAW: I couldn't remember
21 whether there was.

22 MR. WORKOSKY: But you have to remember that
23 generally loading is during off-peak hours. The usage of a
24 loading dock, the frequency is not - it doesn't coincide, most of
25 the time, with the actual street peak hours.

1 A lot of these maneuvers we see are when the
2 adjacent street traffic volumes are lower, and when primarily the
3 people that would be impacted would be the residents coming in
4 and out of the garage.

5 I don't think that's - I don't think that making
6 this a one-way system would change-

7 VICE CHAIRPERSON RENSHAW: So, your alley use for
8 trucks would be about what time?

9 MR. WORKOSKY: Primarily during business hours when
10 - they would primarily serve the retail - the frequency of the
11 30-foot dock, and that's generally during their business hours,
12 during daily delivery.

13 MR. NETTLER: Isn't the use of the loading dock
14 usually covered by the rules and regulations that are adopted for
15 the condominium that set the times and when it can be utilized?

16 MR. WORKOSKY: And the condominium can specify and
17 many of them that we survey do specify those particular hours
18 when it can be used.

19 VICE CHAIRPERSON RENSHAW: Thank you for the
20 clarification.

21 MR. WORKOSKY: Yes.

22 CHAIRPERSON GRIFFIS: Any other questions?

23 MR. NETTLER: My last witness would've been Ms. Ike,
24 I've given you her testimony. If you'd like to hear a further
25 expansion on the historic district, she's certainly willing to

1 provide you with that, given her knowledge of it, but I'll leave
2 that to your discretion.

3 CHAIRPERSON GRIFFIS: Good. No, and I appreciate
4 that, and we certainly appreciate the written testimony and the
5 information in the written submission prior to the hearing.

6 Board Members, do you have any questions? Do you
7 want to hear personal testimony on this?

8 I mean, I think in deference to the time in the
9 afternoon, I think we can take this into the record unless - and
10 if there are not any other questions. It is fascinating.

11 In fact, it's obviously has its historic overlay
12 with the ARTS et cetera has a very deep and rich history.

13 So, in fact, one of the side notes that was not on
14 the record of when we were talking about the open space and
15 public space is as if a war memorial is actually a fair walk, but
16 in proximity to this project.

17 So, there it is. If there's nothing else? Very
18 good. Then, we'll turn it back to you.

19 MR. NETTLER: I will reserve the opportunity to
20 bring things together after the ANC letter, I believe, which is
21 in the record and Office of Planning and others are given an
22 opportunity to testify.

23 CHAIRPERSON GRIFFIS: Very well. Okay. Let's move
24 onto Office of Planning then. The waiver is needed, if I'm not
25 mistaken, to accept the Office of Planning report.

1 Do people have any concerns of that? Do we want to
2 hear an excuse, a note? No, okay, well, I think we can probably
3 waive in the report and hear the testimony today.

4 MR. MCGHETTIGAN: Thank you, Chairman Griffis. I
5 should just say officially for the Office of Planning, my dog ate
6 my report.

7 [Laughter.]

8 CHAIRPERSON GRIFFIS: You can only use that once,
9 and I think it's used already.

10 MR. MCGHETTIGAN: Oh, darn. And I don't have a dog.

11 The Office of Planning has worked with the applicant, met with
12 the applicant on this project, and it's seen the facts of the
13 case.

14 We note in our report, we explain the purposes of
15 the - character of the historic district of that neighborhood.

16 The subject site is in the modern density
17 residential category on the general land use map. It's also in
18 the uptown ARTS special treatment area and the U Street
19 Development Opportunity area, and the comprehensive plan in these
20 areas that goes to for providing housing, and ARTS retail space,
21 especially in the uptown ARTS special treatment area.

22 So, we note that this development is not
23 inconsistent with the goals of the comprehensive plan.

24 Also, we've discussed in our report as was here the
25 purposes of the ARTS mixed use - town ARTS mixed use overlay, and

1 as noted, it's - part of it is to encourage pedestrian activity,
2 especially retail and residential uses, and the - to improve the
3 housing supply and a variety of rent and price ranges.

4 So, that's a very important part of this case is
5 the ARTS overlay, because that's what they're trying to achieve
6 in meeting these design guidelines, and also many of the design
7 purposes of the CR zone are listed in our report are met by this
8 application.

9 The property has the practical uniqueness of having
10 the alley easement, the existing Metro rail tunnels, the La Motta
11 air shaft, and the design loads that can be placed on those
12 tunnels to create the unique situation to consider zoning relief
13 on this site.

14 The practical difficulties of providing this are
15 discussed in my report. The public space requirements, we noted
16 is in conflict with the purposes of the historic district and the
17 ARTS overlay in wanting to have a pedestrian-friendly environment
18 with the street wall, and so the public space requirement is not
19 - would not provide for the - doesn't meet the design
20 requirements of other parts of the zoning ordinance, and not
21 providing it will not substantially impair the purposes of the
22 zoning district.

23 The lot occupancy has been noted with the alley
24 going through the residential being provided on the ground floor,
25 having to be separated from the retail, so they couldn't use

1 retail use or very good practical difficulties in developing the
2 site.

3 As far as the residential recreation space, we did
4 ask the applicant to look at something on the roof, and they, I
5 think, addressed that adequately that it's not practical to
6 provide that. They are providing some recreation space.

7 As noted, we did encourage and change the
8 regulations in the DD to reduce it to five percent, feeling that
9 in those areas, we would want pedestrians to recreate out in the
10 street and make the streets more lively and provide retail and
11 life on the street.

12 As far as the loading space, we found that the
13 geometric problems that have been discussed are practical
14 difficulties in providing the loading space, and all of these
15 things will not provide a substantial detriment to the public
16 good or impair the intent and purpose of the integrity of the
17 zone plan.

18 As far as the loading space, a representative from
19 the Division of Transportation is here, Rachel McClary, to
20 present her report and answer any questions about the substantial
21 detriment of the loading space, and if you have any questions.

22 CHAIRPERSON GRIFFIS: Great. Any questions of
23 Office of Planning from the Board?

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would
25 like our representative, Mr. McHettigan, to react to the police

1 attachment that was part of your OP report, if this is the time
2 for that.

3 MR. MCGHETTIGAN: Oh, okay. The police department
4 officer provided a report that addresses their concern for
5 parking and has some recommendations to the applicant for the
6 building management to have a competent security force and noted
7 that a number of police service to this area, that they will be
8 mitigated by the project, and I think the provision of parking is
9 important in light of the police department's report.

10 So, losing any of that to the recreation space
11 would also not be undesirable.

12 CHAIRPERSON GRIFFIS: Anything else from the Board?
13 Mr. Nettler, do you have any questions for the Office of
14 Planning?

15 MR. NETTLER: No, I don't.

16 CHAIRPERSON GRIFFIS: Okay. Thank you very much,
17 and let us do move on to Transportation report, which I must say
18 is an impressive report from D-DOT, and we welcome their
19 representative here today, and have them introduce themselves and
20 walk us through it.

21 MS. McCLARY: Good afternoon. My name is Rachel
22 McClary, and I'm representing the District Division of
23 Transportation. The applicant is requesting a variance to allow
24 for the elimination of a 55-foot loading berth at the property.

25 According to the District of Columbia municipal

1 regulations, Chapter 22, the site is required to have two loading
2 berths, one at 30 feet and one at 55 feet, and one service
3 delivery, delivery loading space at 20 feet.

4 The applicant is instead proposing to construct one
5 30-foot loading berth only, eliminating the 55-foot berth. The
6 applicant will construct a 20-foot berth - the 20-foot delivery
7 space as required.

8 Based on its review of the case, D-DOT does not see
9 any reason to oppose the berth variance requested by the
10 applicant. It, therefore, recommends the BZA approve their
11 request subject to several conditions.

12 The applicant has given several justifications for
13 desiring to omit the 55-foot berth. They include omitting a
14 berth of this size will add to the amount of retail and art
15 rental space available.

16 A 55-foot berth was shown in the Transportation
17 study and by the testimony to be difficult to achieve in a
18 compact development such as this.

19 Third, the applicant contends that the 55-foot
20 truck berth is not necessary for residential condominiums like
21 these because the units will have infrequent turnover and
22 residents are unlikely to use large trucks, in any event.

23 Fourth, the applicant has argued that the retail
24 users of the site will likely require few large truck deliveries,
25 and finally, the omission of the 55-foot berth seems to be in

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1 keeping with the spirit of mixed use residential and commercial
2 development.

3 D-DOT has been persuaded that large tractor-trailer
4 type trucks will seldom, if ever, need to be used at this site.
5 Since this is the case, D-DOT believes that the imposition of the
6 following conditions should not pose an undue burden for the
7 applicant.

8 The applicant or the property succeeding management
9 should be required to inform condominium owners or potential
10 owners in writing that there is insufficient room for a 55-foot
11 truck to unload or load and to instruct movers to use a 30-foot
12 or 20-foot truck.

13 The applicant or the property succeeding management
14 should be required to write retail leases that include language
15 stating that there are no facilities for 55-foot trucks.

16 This condition should be on retail leases so that
17 retailers would typically take deliveries from 55-foot trucks can
18 carefully consider whether the location is appropriate for them.

19 In the leases, retailers should agree to utilize
20 the delivery trucks that are 30 feet or smaller and to instruct
21 deliverers to use the 30-foot or 20-foot loading areas.

22 And in the unlikely event that a 55-foot truck
23 needs to be used, the applicant or the property succeeding
24 management should request advanced notification so that emergency
25 no parking signs can be obtained right across the street and

1 posted on 14th Street with the required advanced warning.

2 The 55-foot trucks should be instructed to unload
3 from 14th Street in a manner so as to avoid stopping in 14th Street
4 travel lanes and to avoid driving on residential streets
5 including V Street.

6 Finally, D-Dot recommends the following conditions,
7 so that potential conflicts between users of the berth can be
8 avoided.

9 The applicant or the property succeeding management
10 should be required to develop a management plan for deliveries
11 and residential moves. The plan should include scheduling of
12 truck arrivals and loading berth use.

13 Finally, please note that the plan and the
14 applicant's statement is not the one reviewed by D-DOT safety and
15 traffic engineers, and we included the approvable plan in our
16 statement and also that the lay-by shown on V Street in many of
17 these plans cannot be approved.

18 CHAIRPERSON GRIFFIS: Did you see extensive
19 discrepancies between the two plans, the one that you reviewed
20 and the one that's being presented?

21 MS. McCLARY: There seem to be several different
22 versions of the plan that are presented here. Some of them show
23 the layby; some of them don't.

24 CHAIRPERSON GRIFFIS: Right. And is that the
25 biggest item on the drawings that's changing or are there other -

1 I mean, are there other specifics that we're not seeing perhaps
2 that were-

3 MS. McCLARY: I listed them in the statement, the
4 difference between the plans that we approved - or that we can
5 approve and the plans that they submitted. They include the
6 trucks are sticking out into the travel lane, the right of way,
7 and the loading berth for the 20-foot truck doesn't come up flush
8 to the truck. The layby - I'm not sure I remember all of them.

9 CHAIRPERSON GRIFFIS: Well, no, I think we have -
10 and that's very informative and well done. I was wondering if
11 there was additional pieces that we might not have seen.

12 The layby brings up a big point, obviously and I
13 think the applicant is not - it would be not - after this, it is
14 unknown to the applicant, the concern of that, and as stated in
15 the Transportation report, it's not under our jurisdiction at
16 this point, but it doesn't look likely that that's happening.

17 So, that being said, Board Members, any questions
18 of the Department? Yes, Ms. Renshaw?

19 VICE CHAIRPERSON RENSHAW: Mr. Chairman, first of
20 all, I want to compliment the Department of Transportation on its
21 report.

22 This is an extremely thorough report, and I think
23 the Members of the Board; at least, I can speak for myself and
24 should speak for myself, I found it very interesting and very
25 informative.

1 I'm looking at Page 6 where you have level of
2 service at nearby intersections. The traffic study has indicated
3 that due to the volume of the traffic traveling adjacent roads,
4 the new development will have minimal effect on the level of
5 service at the identified intersection. D-DOT concurs with this
6 analysis.

7 Do you take into account the truck traffic that
8 will be generated from this development in concurring with that
9 statement?

10 MS. McCLARY: I think so. I don't know that I
11 considered it at the time, but the - 14th and U Street are
12 serviced by many delivery trucks all the time. So, I don't think
13 that the impact will be substantial.

14 VICE CHAIRPERSON RENSHAW: All right. Okay. If it
15 is found to be substantial, what would D-DOT do?

16 MS. McCLARY: I'm not sure. I think the assumption
17 would be that the amount of deliveries, the number of moves to
18 the site won't be a major impact on the streets.

19 VICE CHAIRPERSON RENSHAW: Is D-DOT comfortable with
20 the alley access?

21 MS. McCLARY: Yes.

22 VICE CHAIRPERSON RENSHAW: You are? And you don't
23 foresee problems along U Street with trucks going into the alley
24 or just the use of the alley by the residents of the development
25 back and forth emptying or entering from U Street?

1 MS. McCLARY: No. Again, these are all major
2 streets. I think 14th Street carries 8,000, 10,000 cars per day.
3 U Street carries many, many cars.

4 VICE CHAIRPERSON RENSHAW: And perhaps-

5 MS. McCLARY: So, I think the main consideration is
6 the number of units, the number of people and then the amount of
7 retail here. It's just not that much of an impact on the area,
8 and also the area is amply served by Metro and bus traffic - or
9 bus - mass transit access.

10 So, my feeling is that most of the people that live
11 in the site will not be using their cars to get around, given the
12 traffic in that part of town.

13 VICE CHAIRPERSON RENSHAW: They won't hold you to
14 it. Thank you.

15 CHAIRPERSON GRIFFIS: Any other questions? Okay. I
16 think Ms. Renshaw is correct, and we absolutely appreciate the
17 report and the thought that went into it and also the thought to
18 the conditions.

19 Okay. Oh, I'm sorry. Any questions to either,
20 actually?

21 MR. NETTLER: No, thank you.

22 CHAIRPERSON GRIFFIS: Good. Then moving on, we did
23 cover the Metropolitan Police report as part of the Office of
24 Planning. Also covered was HPRB. We do have the letter, and I
25 think that is in the record. I'm not sure we need to bring that

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1 up any further.

2 Let me just bring up - well, this is a letter of
3 support. So, any other government reports that you note outside
4 of the ANC report, which we will need to waive in? Okay.

5 Not having any indication that it is, let us look
6 to the ANC report, which actually, if I'm not mistaken, was
7 submitted at the prior application, and I'm not sure that there
8 was-

9 SECRETARY PRUITT: Mr. Chair - actually, Mr. Chair,
10 I was incorrect in that the DPW report needs to be waived in.
11 The ANC report you can find actually in Tab I of the applicant's-

12 CHAIRPERSON GRIFFIS: Right, indeed.

13 SECRETARY PRUITT: -submission, so it was filed
14 timely.

15 CHAIRPERSON GRIFFIS: Indeed. Unless there's any
16 objection, after hearing the report of waiving it in, I think we
17 can sufficiently take care of that and waive in the traffic
18 report, and we have a cover letter of February 14th from Glen
19 Malchur of the ANC that indicates that he's attaching the
20 previously letter - the letter sent previously to the Board.

21 Was there any other action that you were aware of,
22 Mr. Nettler, from part of the applicant and the ANC on this?

23 MR. NETTLER: No, these four variances were the same
24 variances at that time.

25 CHAIRPERSON GRIFFIS: Okay. In which case, I think

1 we can move on. They did come in, in support.

2 MR. NETTLER: This hearing has been continued from
3 an earlier date.

4 CHAIRPERSON GRIFFIS: Right, no, exactly. I do
5 recall.

6 MEMBER LEVY: Mr. Chair?

7 CHAIRPERSON GRIFFIS: Yes?

8 MEMBER LEVY: I'm sorry, before we move on, just
9 quick follow-up question for the Division of Transportation.

10 CHAIRPERSON GRIFFIS: Oh, good.

11 MEMBER LEVY: The site plan that you included in
12 your report, was that somehow taken from the applicant? Is this
13 an applicant's drawing?

14 MS. McCLARY: Yes. Robert Sponseller - we went
15 through several iterations, and that was the one that traffic
16 engineers and the safety people could finally say okay to.

17 MEMBER LEVY: Okay, because it's different from your
18 A2.1.

19 MR. SPONSELLER: Right, it was revised after the
20 submission, and we worked together on it back and forth and we're
21 - this is the current plan.

22 MEMBER LEVY: So, we would assume that the ones
23 attached to the D-DOT report is the current plan?

24 MR. SPONSELLER: That's correct.

25 MEMBER LEVY: Okay. And so that - I would just ask

1 the applicant then does that omit the layby? It's marked on here
2 that the layby cannot be allowed by D-DOT.

3 MR. NETTLER: It doesn't omit the layby, but as you
4 said, the layby is not an issue here, and we're not pursuing the
5 layby with D-DOT because will not approve the layby, so it's not
6 an issue.

7 MEMBER LEVY: Okay.

8 CHAIRPERSON GRIFFIS: We won't ask them what their
9 strategy is.

10 [Laughter.]

11 MEMBER LEVY: Okay, so would this be the new A2.1
12 then?

13 MR. NETTLER: Yes, that's correct.

14 CHAIRPERSON GRIFFIS: No, and what I'm going to do
15 is ask for a formal submission to the record of A2.1 that shows
16 and reflects what is presented today, which shouldn't be a big
17 deal, I think you guys have it. So-

18 MEMBER LEVY: All right, thank you.

19 CHAIRPERSON GRIFFIS: And I appreciate that
20 clarification. Okay. I think that takes care of government
21 reports. ANC - yes, indeed, we do not have any request for party
22 status.

23 Let us go to the first two letters that were
24 submitted, of course - I shouldn't say of course, but Exhibit
25 Number 29 is a letter from Metro in support of the application,

1 and that is all I have note of in terms of submissions.

2 Let me then ask if there is anyone here, persons to
3 present testimony in support of the application today? And in
4 opposition of the application?

5 It's kind of surprising, down in that area of town,
6 there's - oh well, we'll let it go, and questions, reviews from
7 the Board before we ask for summary conclusions?

8 MEMBER LEVY: Sort of another follow-up question.
9 Because D-DOT in their report listed conditions, have those
10 conditions been discussed with the applicant?

11 MR. NETTLER: Yes, we're familiar with the
12 conditions. I would just note D-DOT had made reference to the
13 55-foot loading berth and the retail that - that's not - the
14 retail use is not what required the 55-foot loading berth, so
15 there was no connection between any loading berth for the retail
16 of that size and the retail.

17 But to the extent that there are conditions that
18 are put in here that are supposed to ensure that everyone is
19 aware that there's not a 55-foot loading berth with regard to the
20 residential tenants and those uses, that we are aware of those
21 conditions and they are not a problem for us.

22 MEMBER LEVY: Are there any conditions then in the
23 D-DOT report that are objectionable?

24 MR. NETTLER: No, because I don't think the
25 conditions that they ultimately suggested have reference to that

1 aspect of it, so they are not objectionable.

2 MEMBER LEVY: Okay, thank you. Thanks, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Okay. Then, I think we're
4 ready to get on to summary and conclusions today.

5 MR. NETTLER: Given the lateness in your hour, and
6 the fact that you have another case, I'm going to be even briefer
7 than I normally am.

8 I think that given the criteria that we're
9 required to overcome, that the testimony today and the
10 submissions that we've made before the Board amply demonstrates
11 that the variances are necessary.

12 Not only that, I - well, you've heard testimony
13 regarding the interaction between some of the variances that
14 we're seeking here, and the overlay that apply here, but -
15 including the ARTS overlay, which might suggest the Zoning
16 Commission consider, and the Office of Planning might consider
17 some changes because they will invariably come up in many
18 projects in this area.

19 We do think that this site is unique given the
20 different conditions and so that this does not set - necessarily
21 set a precedent for any other site, and it clearly will not have
22 an impact on the integrity intent of the zone plan since what it
23 achieves is exactly the purpose of the zone plan that has been
24 developed, subsequent to the development of the comprehensive
25 plan in 1984, which is to achieve a pedestrian uses on the site.

1 That's the retail component and the residential,
2 and as was explained by the architect, but for the fact that we
3 have had to move the residential, found it more useful to have
4 more residential uses on the first floor of the rear portion of
5 the building, we wouldn't really be in need for a lot occupancy
6 requirement, but it certainly benefits the site to have that
7 residential use there.

8 Retail use would've served no benefit to either the
9 zone plan or the usefulness of the building.

10 And with regard to the loading berth, as I said, we
11 are cognizant of the conditions. We think they're appropriate;
12 they're certainly the conditions that we would apply here.

13 We would expect that the use of the building would
14 be consistent with what we've been dealing you we expect the use
15 to be, and for that reason as well, I believe that it's
16 appropriate that these variances be granted.

17 We would ask if you agree with us to do so on
18 expedited basis with a bench decision, albeit attaching the
19 conditions that have been suggested, and we would look forward to
20 your approval.

21 CHAIRPERSON GRIFFIS: So, you'd be requesting a
22 summary order also-

23 MR. NETTLER: Summary order, correct.

24 CHAIRPERSON GRIFFIS: All right. Let us then -
25 Board Members, let me get an indication of how to receive - but I

1 want to make one comment. Mr. Nettler, on your closing
2 statement, in terms of the precedence, and I think it's important
3 to have a zoning commission member on the Board to take back that
4 message, and I think it is appropriate to do that. I saw he was
5 taking notes. So, I think the message was heard.

6 The second thing in terms of precedent and setting
7 precedence, I noted in your application, the submission of
8 Appendix H which indicated all of the BZA applications that
9 approved loading docks, and I think - I believe you even
10 indicated that we have never disapproved or denied a loading
11 variance. So, I think maybe we ought to set the record straight
12 on that today.

13 The important piece to it, of course, and my
14 serious comment is that obviously we look at every case
15 individually and we look at the merits of the case that's
16 presented to us. The BZA does not set precedence in its case
17 findings.

18 Certainly, a comparison can be made, I think, by
19 applicants putting in - I would just caution, and I think it does
20 not go into the direct deliberations of this Board, based on the
21 mere fact of what we have to look at, and that is the uniqueness
22 of each individual case to it.

23 Now, the questions of the specifics on that,
24 though, is that this current Board's decisions or that is entire
25 history. Do you know offhand-

1 MR. NETTLER: It's not this current - it's not this
2 current board. It has been a longstanding fact with regard to
3 the Board of Zoning Adjustment, and my submission of the material
4 is certainly with foreknowledge of the fact that a zoning
5 commission member would be sitting on this and perhaps that will
6 be taken back to the Zoning Commission, but I think at this
7 point, it's become apparent that the provision doesn't really
8 serve the purpose for which it was originally adopted almost 50
9 years ago.

10 CHAIRPERSON GRIFFIS: Good. Okay, appreciate that.
11 Board Members, any additional comments? Questions of the
12 applicant? Any - are you prepared to go forward? Very well
13 then. I would move then in approval of Application 16832 of the
14 Metropolis Development Company, LLC.

15 COMMISSIONER MAY: Second.

16 CHAIRPERSON GRIFFIS: Well, yes, actually, let me
17 just continue on-

18 COMMISSIONER MAY: Oh you have to finish. I just
19 wanted to second it.

20 CHAIRPERSON GRIFFIS: Okay, we'll note the second
21 before the motion is complete, and the motion would be for
22 approval of the variance from the public space and ground level
23 requirements. Of course, that's under section 633 for a variance
24 of lot occupancy requirements under Section 634, a variance from
25 the private recreation space requirements, 635 and a variance

1 from the loading berth requirements under Section 2201 to permit
2 construction of the mixed-use building at premises 2045 14th
3 Street Northwest.

4 I'll accept the second by Mr. May and appreciate
5 that and speak to the motion very briefly.

6 I think the relief will be based clearly on the
7 submission by the applicant. I think it has been a very strong
8 case, and I don't want to rehash the entire case, but certainly
9 the three unique aspects of the site were clearly demonstrated
10 that created a practical difficulties, and that being the alley
11 easements, the vents and the tunnel and the construction on that.

12 I think the other prongs of the tests are also as
13 strongly made in terms of impairing the intent and integrity of
14 the zone plan and adjacent use.

15 I think this is a very appropriate project, and I
16 want to just mention one thing, because I think the public space
17 at the ground level has really brought an interesting light for
18 this board of the contradiction of some of the zoning regulations
19 and the - how it, in fact, makes its test on its face, based on
20 the fact that it's in contradiction, and I applaud the applicant
21 for correctly taking the site of the retail and not public space.

22 Frankly, I'm not sure what conventional urban use
23 is for that type of space, but be that said, I will let others -
24 Mr. May can speak second if so moved with the second of the
25 motion.

1 COMMISSIONER MAY: Okay. I'll formally second that
2 motion, but the - I also want to add that in this particular
3 case, I thought that the applicant's case was very well prepared,
4 which makes our work so much easier, getting all the information
5 that we need and making a strong case.

6 I also want to commend the applicant, frankly, for
7 dealing with what has - what turned out, obviously, to be a very
8 deceptive site and a much more complicated site than it first
9 seemed.

10 And I want to commend the perseverance of the
11 applicant and the architect for sticking with it and finding a
12 way to make this work, and really, you know, jumping into this
13 unusual notion that you don't necessarily have to maximize the
14 FAR to be able to make a workable building out of it, and
15 furthermore, the idea of seeing this building as not the top-of-
16 the-line luxury kind of units that it could've been but for
17 something that would hopefully be affordable to first-time home
18 buyers.

19 We'll see how affordable that really is, because
20 the definition of affordable is elusive, but it - I think it
21 bodes very well for the project, and I think it's a commendable
22 effort on the part of all those involved, and that's what I have
23 to say.

24 CHAIRPERSON GRIFFIS: Good. Thank you, Mr. May.
25 Others?

1 MEMBER LEVY: Just a quick comment, Mr. Chair. I
2 also want to commend the applicant for an excellent job in
3 putting the case together.

4 It makes our job a lot easier and also to thank the
5 Office of Planning and the District Division of Transportation
6 for very thorough reports and welcome D-DOT's participation as
7 well.

8 CHAIRPERSON GRIFFIS: Good. Any others?

9 VICE CHAIRPERSON RENSHAW: Yes, I was looking at Mr.
10 Etherly, thinking that I would be the cleanup hitter and allow
11 him to go forward, but obviously, he's going to be the cleanup
12 hitter on this case.

13 I support this mixed-use project, which takes
14 advantage of the adjacent park, which I think is such a plus.
15 It's an area of the City that should benefit from this
16 homesteading retail arrangement very tastefully, handled in an
17 ARTS overlay district.

18 I support the smaller truck bays, because I think
19 that the City streets have been caused to have huge problems
20 because of these huge trucks that beat up the City streets. So,
21 anytime that we can make arrangements to have smaller trucks,
22 that's a plus in my mind.

23 I am concerned about two things, one is the - what
24 may be the heavy use of the alley system or the increased use of
25 this alley system because motorists are - motorists study the

1 alley system in this City.

2 As you know, as a way to kind of get around,
3 circumvent bottlenecks and we've got an F-designated intersection
4 at 14th and U Streets, and I hope to goodness that this alley
5 system isn't going to be a shortcut to get around that
6 intersection. So, perhaps the applicant would keep an eye on
7 that.

8 And then the - there is the concern about traffic
9 dumping into and turning in from U Street. That's near the
10 corner as I can scope it out on the map.

11 There is a bus stop, a heavily-used bus stop at the
12 corner of 14th and U Streets, going - it would be going westbound,
13 wouldn't it be, going westbound towards 16th, and it is just for
14 again the applicant to make sure that there is not - and D-DOT to
15 make sure that there is not an overuse of that opening into the
16 alley that would affect pedestrian safety and also other
17 vehicular safety matters. Thank you.

18 CHAIRPERSON GRIFFIS: Good. Thank you, Ms. Renshaw.

19 And taking the last word, let me speak to two things,
20 residential recreation space, which I think was adequately
21 addressed in the application of the public testimony, but I think
22 it was strongly made based on the fact that the tunnels and the
23 structural issues involved to put an assembly space on the roof
24 was - created a practical difficulty.

25 I will reserve time if you want to talk. Loading,

1 I want to talk to loading, because my motion, and Mr. May, with
2 your acceptance, can second amendment to the motion, and that is
3 to include the conditions as outlined from D-DOT, because I think
4 they are clear.

5 I think they, in fact, will help the building, the
6 current developer and also more importantly the condo owners in
7 the long term in terms of coordination scheduling and loading and
8 unloading.

9 I can walk through those if we need to, to flush
10 them out, but I think it has to with scheduling, the loading and
11 unloading of the docks, provisions of written notice of the
12 condominium provisions and also in the retail uses about the
13 unavailability of a 55-foot loading bay, and in fact, the
14 opportunity and recourse to, as was said, walk across the street
15 to get temporary no parking signs for any loading that might be
16 scheduled, and I think the big piece of that is scheduling.

17 I mean, that's going to be, as Ms. Renshaw is
18 getting to, it's a tight alley, and with cars coming in and out
19 and loading, scheduling's going to be of utmost importance to us.

20 Is that acceptable, Mr. May?

21 COMMISSIONER MAY: Absolutely. I second the motion
22 for a third time.

23 CHAIRPERSON GRIFFIS: Okay. Indeed. Very well.
24 You can't say that we don't pay attention to detail around here.
25 Any other comments on that? Anything I'm forgetting? Very well

1 then, I can ask for all those in favor of the motion, please
2 signify aye by saying aye.

3 ALL BOARD MEMBERS: Aye.

4 CHAIRPERSON GRIFFIS: And opposed? And we can have
5 Staff record the vote when they're ready.

6 MR. NETTLER: Thank you very much.

7 SECRETARY BAILEY: The vote is recorded as five,
8 zero, zero to approve the application. Mr. Griffis made the
9 motion, Mr. May second; Mr. Levy, Mrs. Renshaw and Mr. Etherly is
10 in agreement, and Mr. Chairman, the conditions are located on
11 Page 6 of the Department of Transportation report. There are
12 four conditions. Those are to accompany this order?

13 CHAIRPERSON GRIFFIS: Yes.

14 SECRETARY BAILEY: And that's a summary order, sir?

15 CHAIRPERSON GRIFFIS: Give me the Board Members'
16 impression if you want to do that. I don't see any difficulty
17 and non-opposition, although we do need to flush out some of the
18 specifics on it. Mr. Levy, did you want to speak to that?

19 MEMBER LEVY: No, I'm just reminded by Corporate
20 Counsel that the applicant was going to submit a new site plan-

21 CHAIRPERSON GRIFFIS: Oh, right, indeed, which I
22 have already.

23 MEMBER LEVY: Okay, thanks, sorry.

24 CHAIRPERSON GRIFFIS: Indeed, yes, that went into
25 the record, so that should be part of it, and any concern about

1 summary order on this?

2 MS. McCLARY: The statement that I submitted, I
3 don't know if anybody caught this, but I did. It has a typo in
4 it for - it says delivery trucks that are smaller than 30 feet,
5 and it should say 30 feet or smaller. If you're just going to
6 adopt those straight out, I was assuming they'd be retyped.

7 CHAIRPERSON GRIFFIS: In the conditions?

8 MS. McCLARY: Right.

9 CHAIRPERSON GRIFFIS: And what bullet number is it?

10 MS. McCLARY: Number 4. Retailer should agree to
11 utilize delivery trucks that are smaller than 30 feet, and it
12 should just say, 30 feet or smaller.

13 CHAIRPERSON GRIFFIS: That goes to our editing
14 department, so we'll get that done. Okay, great. No, I
15 appreciate that being set out. Okay.

16 All right, I don't see any objection to summary
17 order, so we can do that.

18 Last piece before we excuse you is we need to know
19 a construction schedule. What's the anticipated completion on
20 this? This is - you know, not part of the case regarding-

21 MR. NETTLER: Soon.

22 CHAIRPERSON GRIFFIS: Fall 2003. Fabulous, okay.
23 Good luck. All right, let us take - thank you, Mr. Nettler.
24 Let's take ten minutes, Board, while the next applicants sets up
25 and we will resume at that time.

1 (Whereupon, the foregoing matter went
2 off the record at 3:01 p.m. and went
3 back on the record at 3:15 p.m.)

4 CHAIRPERSON GRIFFIS: Okay. We're back, and I think
5 we can call the next case in the afternoon.

6 SECRETARY BAILEY: Mr. Chairman, the last case of
7 the day is Application Number 16869 of Kings Creek, LLC pursuant
8 to 11 DCMR 3103.2, for a variance from the floor area ratio
9 requirements under section 402; a variance from the lot occupancy
10 requirements under section 403; a variance from the nonconforming
11 structure provisions under section 2001.3, and pursuant to 11
12 DCMR 3104.1, for a special exception to exceed the height
13 provisions, section 1402, of the Reed-Cooke Overlay District
14 under section 1403, the project is to construct an addition to an
15 existing building for a mixed-use residential and existing retail
16 development in the Reed-Cooke R-5-B District at premises 2329
17 Champlain Street Northwest, Square 2563, Lot 103.

18 All those persons wishing to testify this
19 afternoon, please stand to take the oath.

20 Please raise your right hand. Do you solemnly
21 swear or affirm that the testimony you are about to give in this
22 proceeding will be the truth, the whole truth and nothing but the
23 truth? How do you respond?

24 ALL: I do.

25 SECRETARY BAILEY: Thank you.

1 CHAIRPERSON GRIFFIS: Good, and good afternoon to
2 you all. Let me first do a quick statement.

3 I do know Mr. Kearley, who is in front of us today,
4 and he'll introduce himself, and I have not spoken about this
5 application with him and did not really actually realize he was
6 designing it until I looked at some of my proceedings and then,
7 frankly, saw him walking in with the model, which clinched the
8 fact that he would be part of this application, but I would put
9 it to the Board, for any questions or possibilities. I think I
10 can, in fact, hear this case impartially and deliberate on it
11 fairly.

12 MEMBER ETHERLY: Mr. Chair, thank you for that
13 tragic announcement. I did not expect to have controversy at the
14 beginning of our last case in the afternoon, but in all
15 seriousness, I have no difficulty with your disclosure. Thank
16 you, Mr. Chairman.

17 VICE CHAIRPERSON RENSHAW: And Mr. Chairman, you
18 have no financial interest in this project, correct?

19 CHAIRPERSON GRIFFIS: No, none at all.

20 VICE CHAIRPERSON RENSHAW: I have no problem with
21 your sitting on this case.

22 CHAIRPERSON GRIFFIS: Any other comments from the
23 Board? Okay, any comments from the applicant or anybody in the
24 audience at this time?

25 MR. FARMER: None, sir.

1 CHAIRPERSON GRIFFIS: Okay. Then let us move
2 quickly on with us, and turn it over to you.

3 MR. FARMER: Mr. Chairman, Members of the Board, I
4 am John Farmer. I am the counsel for Kings Creek, LLC. We're
5 here requesting relief for variances from the floor area ratio
6 requirements, variance from lot occupancy requirements and
7 variance from the nonconforming structure provisions of the
8 zoning regulations.

9 We're also looking for a special exception to
10 exceed the height provisions of the existing Reed-Cooke overlay.

11 I won't burden the Board at this particular
12 juncture with the specific legal requirements for the variance
13 and special exceptions. Those are well known to the Board.

14 I would, however, like to point out to you that
15 what we've attempted to do with this particular case is address
16 those particular needs and concerns toward a vertical development
17 of a unique structure on a unique site, which again leads us to
18 the justification for the variances itself.

19 The Reed-Cooke overlay itself was designed to
20 retain existing local businesses and to produce new housing for
21 that particular area. We believe this particular design does
22 that.

23 We believe it does it in a way that satisfies the
24 needs and the wants and the desires of most members of the
25 community and the legal requirements of the Zoning Regulations

1 themselves.

2 I would like to turn this over at this particular
3 juncture to the principle for Kings Creek, LLC, Mr. Dominique
4 Kostelac to explain the project followed by our architect.

5 MR. KOSTELAC: Hello. My name is Dominique
6 Kostelac, and I'm the principal of Kings Creek, LLC, developer of
7 the project here. If I could just say a brief points about it.

8 It's - the existing building is a 1924-granite
9 structure parking garage later turned into - excuse me, in that
10 era, it was an auto show room, has great historical - it's a
11 beautiful building.

12 On the first floor is a tenant of long standing and
13 of great amenities to the community, the Brass Knob. It sells
14 architectural antiques, doors, hardwares and things that help in
15 the restoration business in the community, as well as a good
16 friend of mine.

17 We have a very amenable relationship for his tenure
18 to continue in the future there, as long as he sees fit, but one
19 of the things our goals was, was to try to save this building,
20 which is unique in its properties and to - in light of the type
21 of development and overlaying interests in that neighborhood to
22 combine it in a mixed-use development that's part residential and
23 part retail.

24 And I think some of the design elements that are
25 part of this project is to not set back the building - not to

1 crowd the street and to bring it back in a terraced garden
2 approach and to create some green space as well as residential
3 units on top of the building.

4 Just point out some of the specific design
5 amenities of the building, I'd like to turn over the mike to the
6 architect, Greg Kearley.

7 MR. KEARLEY: My name is Greg Kearley. I'm the
8 principle for Inscape Architects in the District on Connecticut
9 Avenue and Dupont, and I'll just briefly take you through the
10 project and explain the architecture and the building and the
11 siting and those type of things.

12 CHAIRPERSON GRIFFIS: I'm going to ask you to
13 actually move the easel out a bit-

14 MR. KEARLEY: Okay.

15 CHAIRPERSON GRIFFIS: -because otherwise we're going
16 to get neck strain.

17 MR. KEARLEY: I did bring some digital photos with
18 the new existing building and the proposed building for the Board
19 that they can see and pass those back. It's also on the display
20 also, so - but this would give you a better look at that.

21 CHAIRPERSON GRIFFIS: Okay, so you're putting these
22 into the record?

23 MR. KEARLEY: Yes.

24 CHAIRPERSON GRIFFIS: All right. We'll submit
25 everything down to Staff and then they can distribute it to the

1 Board. Do you have - how many copies are those? Are those just
2 one copy of each?

3 MR. KEARLEY: They're three copies of the photo on
4 the left and one copy of the photo on the right on the board.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. KEARLEY: Our previous submission had the
7 elevations and plans and whatnot that was just to show in more
8 light on the impact that the building has on the street and on
9 the area. One is coming from one direction, one is coming from
10 the other direction.

11 CHAIRPERSON GRIFFIS: Right, I don't see a problem
12 with that at all. We just have to log it all in, because it is
13 becoming part of the case file, and Staff will take care of this,
14 and then of course, in most circumstances, we ask for additional
15 copies so that all the Board can see them, but we will make do
16 with these at this time, and then we'll pass the single one up
17 and down as needed. Okay.

18 MR. KEARLEY: Okay. The property is located 2329
19 Champlain Street, which is across from the Lofts, which is the
20 Hoffman Building that is going up in Adams Morgan at - with the
21 parking structure.

22 This is the pedestrian walk that they're building,
23 and as you continue on up the pedestrian walk, our building is on
24 access with that, as you can see from the site model.

25 This is a topo - this is not a topo model; it's

1 just a site model to show massing, so the land actually slopes as
2 the high point on 18th Street, and it slopes down to our site.

3 So, we are actually lower than the Hoffman
4 Building, but you can see where, if you're familiar with that
5 project, that's the pedestrian walk that connects the two parts
6 of the building, and we're on access with that.

7 So, what we tried to do - what we tried to do on
8 the building is work with - you have the historic existing
9 building and facade which we wanted to keep intact, because we
10 felt that it had some - a certain significance that we wanted to
11 keep. It's part of the neighborhood and it's been around for
12 years.

13 So, what we did was we set back from that building,
14 and we actually have outdoor space, private outdoor space, which
15 allows us to set back, and instead of using the whole envelope of
16 the existing building and building straight up, what we tried to
17 do is - what we did was carve out the building.

18 So, you don't have the effect of a canyon effect,
19 where you have all these buildings that have been going up on
20 Champlain which are sometimes five and six stories high, that you
21 won't have that, so light will actually be able to filter into
22 the street, and you won't have that canyon effect that happens so
23 much in the developments when people build straight up and have
24 that.

25 So, the sun will come like this and so we carved

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1 out this portion of the street, which actually brings light into
2 Champlain, and what that also did was it allowed us to have quite
3 a bit of public and private outdoor space for the units.

4 All these plazas are going to be roof gardens,
5 whether it's private or whether it's public, and when I mean
6 public, it's not necessarily public for the general public, but
7 public for the inhabitants of the units.

8 So, this space right here is almost entirely public
9 for the units, and in the center courtyard right here is almost
10 entirely - and then these spaces become private outdoor space and
11 rooftop gardens.

12 So, almost all the space that has been roof has
13 been turned over to have greenery within the City, which we
14 thought was important for the units, but also important in terms
15 of the community.

16 So, what we tried to do was create a building that
17 would think about the energy and the eclectic nature of Adams
18 Morgan, and we turned that into the architecture.

19 So, we have 13 units in the proposal in the project
20 and 13 parking spaces, which we thought was significant, so we
21 wouldn't contribute necessarily to the parking problems that are
22 associated with Adams Morgan. So, each one of the units has a
23 parking space, and that happens on the second floor.

24 You can drive down the alley and actually get into
25 the - it has a ramp, it's already built in that you come in on

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1 grade on the second floor from the alley, and that's where the
2 auto entrance would be.

3 The public entrance for the units would be, at this
4 point, on the building and then the rest of - the rest of the
5 facade will still be the Brass Knob, so - I'll bring this over
6 here.

7 This is the front elevation, and I think you get a
8 better idea of what's happening from the model. It gives you a
9 truer indication of what's happening and how the building is
10 layered back.

11 The typical floor plan, you can see the different
12 courtyards and the outdoor space that is - this is the actual
13 fourth floor, which is the second floor of the new building which
14 is on top. You have two existing floors, then we're going up
15 three, plus some pavilions.

16 So, that's sort of the project in a nutshell, and
17 if there's any questions, I'd be glad to answer any questions
18 about any specific issues that you might have.

19 CHAIRPERSON GRIFFIS: In the drawings submitted, I
20 don't see a site plan that might show the relationship to the
21 alley and the entrance of the parking. Maybe I'm not reading
22 correctly-

23 MR. KEARLEY: On the cover sheet, there is a site -
24 and the center portion of it didn't come out as clear on the
25 copies is the actual building, and you can see the relationship

1 to Champlain Street and to the alley from there.

2 There's - basically on either side is vacant.
3 There are two small structures, one on each side of the project,
4 with parking on either side of that, so it's basically open space
5 on either side of the project at this point.

6 CHAIRPERSON GRIFFIS: I see, okay, and then looking
7 at second floor plan on the left of the sheet is actually the
8 alley.

9 MR. KEARLEY: Exactly.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. KEARLEY: And you can see how that - if you're
12 looking at A102-

13 CHAIRPERSON GRIFFIS: Right.

14 MR. KEARLEY: Then you can see the entrance into the
15 building at the bottom left portion of the site, and then those
16 are the 13 parking spaces, and then the residential use, which
17 utilizes the light either in front or back, are part of duplexes
18 that you enter from the third floor.

19 CHAIRPERSON GRIFFIS: Now the additional - let us
20 call them roofs - well, I hadn't get to call them that actually -
21 the-

22 MR. KEARLEY: The three pavilions on the top or
23 however we want to-

24 CHAIRPERSON GRIFFIS: Yes, pavilions might be a good
25 word to use on these. They're obviously habitable space, but

1 they are - I would say kind of enlarged or glorified, if I'm
2 looking at the scale correctly-

3 MR. KEARLEY: They're approximately about 400 square
4 feet a piece, maybe - or less than that. I think it totals about
5 1,000 square feet for the three of them.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. KEARLEY: But they are - there's three units on
8 the fifth floor, which is the third floor of the addition, and
9 there - they work with each one of those three units.

10 So, what happened is we wanted to give over the
11 green space, but in terms of circulation and whatnot, those
12 became - those are private gardens on the rooftop, but we wanted
13 to have a structure that was on that, that allowed people to
14 engage in that.

15 I think the problem of just having a roof garden
16 and having it be used, as we wanted some type of residential
17 component to be available, so you could interact with that space,
18 and so we put - what we did was we set back from the street and
19 from the edge of the building as far as possible in order to
20 minimize any effect that that might have, and I think the views
21 that we have in the computer rendering and - sort of shows the
22 minimal impact that those do have, as you walk up and down
23 Champlain Street.

24 So - but I thought it was - we thought it was
25 important, and Dominique thought it was important that we did

1 turn over as much of the building we could to green space, so we
2 could have at least some contribution to that in the City, but in
3 order to do that, we felt it necessary to engage that space with
4 some type of residential unit or else it wouldn't be used. So-

5 CHAIRPERSON GRIFFIS: Okay, and the submission
6 indicates that the existing structure is, I don't know, roughly
7 25 feet high. Where is the 40-foot mark on this, in that this
8 is a substantial - just looking on face, a substantial height
9 increase from the Reed-Cooke overlay-

10 MR. KEARLEY: We're at about 11 feet floor to floor
11 on the units itself, so if you start at say, 24, 25 feet, and
12 that was the parapet height, so we're sort of dropped down from
13 that somewhat.

14 So, if you go 11 feet floor to floor, you'd be
15 somewhere in the middle of the second floor of the addition which
16 would be the fourth floor. Do you want me to point that out on
17 the-

18 The 40-foot height would be someplace around this
19 area right here, which is what we tried to do from anything that
20 got passed the - got above the 40-foot mark.

21 We tried to set back from the street, so we tried
22 to stay within the tent of that by where we did go higher than
23 that, with the exception of the circulation tower, we set back a
24 minimum of about 15 feet, and in most cases, in terms of where
25 the mass of this project is, you know, 40 or 50 feet from the

1 street.

2 So, we tried to stay within the intent of the 40
3 feet, by setting back anything that happened-

4 CHAIRPERSON GRIFFIS: Okay, I think it does-

5 MR. KEARLEY: -above that.

6 CHAIRPERSON GRIFFIS: -speak to the fact that the
7 height, increase in height is a special exception and not a
8 variance, which does go to mitigating obviously the adverse use
9 and impacting the surrounding area.

10 Clearly, a very eclectic building, and I think it
11 does kind of - it's fascinating, and the other thing - Ms.
12 Renshaw, let me let you speak, but the other thing I'd like to
13 have addressed is, you've indicated that this isn't a topo or
14 isn't correct topography.

15 What I'd like to do is have you just address how
16 this building, in terms of its massing, fits into the rest of the
17 area in terms of one, the building heights that are existing, but
18 also in terms of the slope and terrain that's in the area.

19 MR. KEARLEY: This direction is north. 18th Street
20 runs north to south basically, so north is this way. The site in
21 the area slopes from north to south and it also slopes from west
22 to east in this area.

23 So, in terms of how we fit in, and in terms of the
24 massing and the volume of the rest of the space, I think the
25 Hoffman Building set a lot of precedent in what's going on in

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1 this neighborhood, and we set - we used that as sort of a
2 benchmark in some ways and tried to stay underneath that.

3 So, the building - the site does slope from this
4 way down here, so in terms of the impact of our space, we would
5 be well underneath the existing building that's being built
6 across the street, even though the height of our building is
7 consistent with that building, just because it slopes down and at
8 the starting point.

9 CHAIRPERSON GRIFFIS: So, are we seeing the correct
10 modeling of the relationship for the Hoffman Building?

11 MR. KEARLEY: The relationship with the building is
12 completely accurate. The only thing that is not shown in this
13 site model is the topography, but the relationships with the
14 spaces and the spaces and the heights of the existing buildings
15 are all - are all accurate.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. KEARLEY: It just is not a topography - it's not
18 a topo map where it shows the slope of the space.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. KEARLEY: So, that's one of the reasons our
21 building looks similar in height to the Hoffman Building. We're
22 actually down below it, but the heights are consistent with one
23 another.

24 CHAIRPERSON GRIFFIS: I see. Questions?

25 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would

1 like to ask the architect, the higher portion of your project
2 backs up on what? I'm looking at the Office of Planning's map
3 that is included with Exhibit 23, but I'm just trying to get a
4 gleaning of what is behind the tallest part of your project.

5 MR. KEARLEY: Directly behind our project is a
6 public alley, which gives us access, but behind that is
7 residential component, but generally the residential component is
8 set back, as you can probably see from the aerial photo that you
9 have.

10 I don't have that in front of me, but the street
11 that would be directly east of - pardon me - is Ontario, so
12 that's the street that's parallel to Champlain and east of our
13 project.

14 VICE CHAIRPERSON RENSHAW: And the height of that
15 building, directly behind you across the alley behind you in this
16 map is-

17 CHAIRPERSON GRIFFIS: It looks like a large T
18 apartment building.

19 MR. KEARLEY: Yes, that's - that was three stories
20 high, that particular building, so that's - we're above that
21 building in terms of the massing.

22 CHAIRPERSON GRIFFIS: Okay, other questions at this
23 time?

24 COMMISSIONER MAY: I would like to know who was
25 going to talk to the specifics of the zoning issues here and the

1 variances requested. Is that something that the architect is
2 going to talk to, or is somebody else going to make that?

3 MR. KEARLEY: John Farmer - yes - John will address
4 that. In terms of architectural, if there's any questions, I can
5 talk to you about it - I can answer any questions about how we
6 went about dealing with those issues.

7 CHAIRPERSON GRIFFIS: Is this really is a lap pool
8 up top?

9 MR. KEARLEY: What we're hoping to accomplish is to
10 have some type of water element, and if it's a lap pool or if
11 it's - we wanted to have some type of water element that the
12 people, whether it's in public or private space, can engage into,
13 and so whether it's a lap pool, whether it's a fountain, whether
14 it's a combination of different things, that hasn't really been
15 decided yet, and we'll develop that as it goes along, but just
16 having some type of water element within the urban environment we
17 thought was important.

18 And those large open spaces which are public and
19 private, we're going to be working with a landscape architect to
20 develop those. It's just open space right now, and that needs to
21 be developed.

22 CHAIRPERSON GRIFFIS: Well, just a note of caution,
23 of course, any sort of action that this board takes today could
24 conceivably, if approved, lock you into certain givens, so there
25 wouldn't be a lot of latitude. I guess the question is how far

1 along are these drawings?

2 MR. KEARLEY: The drawings in terms of the massing
3 and in terms of the facades and whatnot are what we're
4 anticipating.

5 It would be something where we would have some hard
6 scape issues and different things like that, which would be
7 worked on as we develop the project, but it's something where I
8 think we're all well representing as what we're asking for, so
9 we're not planning on making any significant changes to the
10 project from this point on.

11 CHAIRPERSON GRIFFIS: Okay. Maybe lap pool to
12 wading pool, you know, a little different, but-

13 MR. KEARLEY: Exactly, but in terms os-

14 CHAIRPERSON GRIFFIS: It's not the zoning issue
15 we're concerned with-

16 MR. KEARLEY: Exactly.

17 CHAIRPERSON GRIFFIS: Okay. Any other questions of
18 the design at this point?

19 MEMBER ETHERLY: Very quickly, Mr. Chairman-

20 CHAIRPERSON GRIFFIS: Yes.

21 MEMBER ETHERLY: -just to clarify with regard to
22 understanding for garage access for vehicles.

23 One of the photographs which is labeled Exhibit
24 Number 5, within the file, denotes a view of the subject property
25 from the east, and I'll kind of show that, so the architect and

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1 applicant can kind of see that a little bit.

2 MR. KEARLEY: Sure.

3 MEMBER ETHERLY: So, your vehicles are going to be
4 accessing through that-

5 MR. KEARLEY: Exactly, and that's an existing garage
6 opening, and it's an existing ramp that comes onto the second
7 floor.

8 MEMBER ETHERLY: Okay.

9 MR. KEARLEY: So, we were just going to clean that
10 up, but that was - that's exactly where the vehicles would enter.

11 MEMBER ETHERLY: Okay, and is that directly off of
12 this alleyway, and I'm now indicating a photo that's labeled view
13 from the north?

14 MR. KEARLEY: Exactly. That's exactly where it's
15 from.

16 MEMBER ETHERLY: Okay. So, pretty much the access
17 for vehicles would be through that alleyway, make a turn - is
18 that alley two way?

19 MR. KEARLEY: It's a two-way alley. It's an alley
20 which we feel is the significant width. There's cars that go
21 down there all the time.

22 We're not - any deliveries and things like that
23 that happen at the Brass Knob, there's a number of curb cuts
24 there, and they bring everything in through the front of the
25 project, and they have access to the front. So, we're not

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1 anticipating any need for deliveries and those types of things
2 from the alley.

3 MEMBER ETHERLY: Okay, and you indicated in one of
4 the drawings - I apologize for not having that number, but it's
5 noted that there is a trash receptacle - trash removal and
6 recyclables, which is noted on Drawing A102-

7 MR. KEARLEY: Exactly. We'd have that within the
8 garage, because we - the building takes up the building - the lot
9 footprint. So, there was really no place to put that on the
10 outside of the building, and so we have that within that
11 structure.

12 MEMBER ETHERLY: Okay. So, for your trash removal,
13 recyclable collections, how do you anticipate that being
14 serviced? That would be service also through rear driveway, I
15 mean that rear alley?

16 MR. KEARLEY: I anticipate it through the rear
17 alley, yes.

18 MEMBER ETHERLY: Okay, okay. All right.

19 MR. KEARLEY: And working with whoever we contract
20 to do that to have access to those spaces, so they don't have to
21 necessarily block the alley and do things of that nature, as much
22 as possible, so they can get in and out quickly.

23 MEMBER ETHERLY: Okay. Quick question for you.
24 This may be more related to just the history of the building.

25 Now looking at another series of photos, which are

1 labeled view from the west, which appears to be the front of the
2 building, are those two presently operational garage doors on the
3 front of the building?

4 MR. KEARLEY: Yes, that's for the Brass Knob uses
5 that, and so-

6 MEMBER ETHERLY: Okay.

7 MR. KEARLEY: -we don't plan on altering the Brass
8 Knob's business or - our entrance from the building would be at
9 the far south point of the building, which is currently used to
10 get up into the second floor anyways, so we're not changing the
11 use of that, so-

12 MEMBER ETHERLY: Okay. So the presentation of the
13 front facade of the building will essentially stay the same in
14 terms of that-

15 MR. KEARLEY: Yes. What we are going to be doing is
16 we're going to be working with restoring the building. There are
17 certain parts of the building that has been banged up over the
18 years, and so part of the process is to restore that building, as
19 much as possible for that.

20 MEMBER ETHERLY: Okay. All right. Thank you.
21 Thank you, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: The written submission
23 indicates that the materials are complementary to the original
24 structure, and your words are both in density and in color. Do
25 you want to talk a little bit about what the materials are and

1 how that actually happens?

2 MR. KEARLEY: Well, in terms of complementary, I
3 think there's sort of two trains of thought in what you try to do
4 with a historic building of this nature. One is to mimic that,
5 and one is to do something somewhat different, but relate to it
6 in scale and different things of that nature.

7 CHAIRPERSON GRIFFIS: Actually, let me interrupt
8 you, I need clarification. This is not a designated historic
9 building, correct?

10 MR. KEARLEY: No, no.

11 CHAIRPERSON GRIFFIS: So, it has no historic - but
12 when you say that just for clarification, we're talking about an
13 old building-

14 MR. KEARLEY: Exactly.

15 CHAIRPERSON GRIFFIS: -of some architectural
16 character.

17 MR. KEARLEY: Exactly.

18 MR. FARMER: Mr. Chairman, if I may. I think the
19 way we really characterize this building is it's architecturally
20 unique, and reflective of a certain period of Washington history.
21 It's definitely not a historic landmark.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. KEARLEY: It's a granite building, a true
24 granite building. It's, you know, 16-inch thick walls of true
25 granite, so in terms of what we're trying to do, that sort of

1 plays with that as using some of the concrete block and stone and
2 whatnot on the sides of the building, which act as load bearing
3 components of the building, and actually the base of the
4 circulation tower would be a reflection of that also.

5 So, I think that's what we were talking about when
6 we talked about using materials that are similar in type but
7 actually usable in this day and age.

8 And in terms of things complementing, it's our view
9 architecturally that the way to go about complementing this
10 building is not trying to compete with it in terms of mimicking
11 the style of the building, which is really unattainable at this
12 day and age to try to do a building like that economically, but
13 by doing a building that sets back from the building and is
14 unique in its own way, that acts as a backdrop to that building.

15 So, we didn't necessarily want to try to mimic that
16 in terms of style and whatnot, but to celebrate a new building,
17 which would then set the existing structure apart, and so that's
18 where we went with architecturally-

19 CHAIRPERSON GRIFFIS: And what's the skin material?

20 MR. KEARLEY: The skin material is made up of
21 concrete block, stone; there's some corrugated metal and stucco.

22 The color components are stucco. You can see where the silver
23 is metal, and then you can - let me just point that out on the
24 model.

25 In terms of the load bearing walls right here,

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1 concrete block, either split face or ground face that would go
2 back into relating to the existing building structure, where you
3 have the silver would be metal components, and then the color
4 would be stucco.

5 CHAIRPERSON GRIFFIS: Yes?

6 VICE CHAIRPERSON RENSHAW: What does it look like on
7 the back side of the building? And could you put your hand as to
8 where the apartment house across the alley would come in
9 relationship to your-

10 MR. KEARLEY: The apartment house across the alley
11 would be somewhere in this nature.

12 VICE CHAIRPERSON RENSHAW: About that tall?

13 MR. KEARLEY: Yes. I mean, this is - it's - since
14 it's three floors up, we're starting at this point, it would be
15 somewhere around this point right here, because the nature of the
16 slope of the building, you come out a grade right here at this
17 point. So - and the building is actually situated at this point
18 on the northern portion of the building, not on the southern
19 portion of the building.

20 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I was just
21 looking at Exhibit 5, view from the north, which shows the site
22 and then behind it, what I think are the apartments, and those
23 apartments don't look to be that much taller than your site.

24 CHAIRPERSON GRIFFIS: You're looking at view from
25 the north, this one?

1 VICE CHAIRPERSON RENSHAW: Yes.

2 CHAIRPERSON GRIFFIS: This is the new project,
3 that's actually the lofts on Adams Morgan, it's on the other
4 side.

5 VICE CHAIRPERSON RENSHAW: Oh. Thank you for
6 clarifying.

7 CHAIRPERSON GRIFFIS: Okay, anything else on design?
8 Who's the construction contractor? Well, I've bring it up only
9 because in your written submission, you make a point of saying
10 the project will be developed by a local construction company,
11 which employs local residents, so we always like to verify.

12 [Mr. Kostelac raises hand.]

13 That would be you by the raised hand.

14 MR. KOSTELAC: I wear many hats.

15 CHAIRPERSON GRIFFIS: I see, okay. Good, all right.
16 Well, then we'll turn it back to Mr. May, you have-

17 COMMISSIONER MAY: Maybe this has been covered
18 already, but there's so much to absorb here, and it's not all
19 laid out very clearly.

20 The - where the building meets the alley, there's
21 that slight bend and then you're projecting over that.

22 MR. KEARLEY: Yes, that's on our property. We're
23 not going over the alley. The building actually-

24 COMMISSIONER MAY: The current lot occupancy is less
25 than 100 percent.

1 MR. KEARLEY: 97, 98 percent, yes.

2 COMMISSIONER MAY: And we're going up to 100
3 percent?

4 MR. KEARLEY: Yes.

5 COMMISSIONER MAY: Okay. Thank you.

6 CHAIRPERSON GRIFFIS: Okay. If not, I mean, we can
7 always return to questions in terms of design, but I'll have you
8 continue.

9 MR. FARMER: I think as our architect and Mr.
10 Kostelac have attempted to explain, we've got a unique site which
11 presents unique problems. As you can note from both the site
12 plan and the description, the site itself is very irregularly
13 shaped, and it has again, what we consider to be an
14 architecturally unique structure of, I believe, of some
15 importance in the history of the City.

16 It was built as a - originally as a garage. It's a
17 very solid building, it is a solid granite building, and it is
18 something that, I think, it be a shame to lose.

19 What that has led us to is again this vertical-type
20 development, and this vertical-type development has been set back
21 to provide light and a adequate number of residential units to
22 meet the purposes of the Reed-Cooke overlay.

23 We should also note that we took great pains to
24 make sure that the existing business, the Brass Knob, which has
25 some history in this community, could stay in this site as long

1 as it wanted.

2 We are going through great pains, as well, to make
3 sure that their business is not disturbed during the construction
4 period, and that it will be maintained as long as that business
5 wants to be there.

6 It's a popular business in the community, and we
7 recognize its importance in supporting the housing renovation
8 efforts in that particular area.

9 CHAIRPERSON GRIFFIS: Are they going to stay
10 operational during construction?

11 MR. FARMER: Yes, sir. Again, we have taken a very
12 unique approach. This is, as I say, a very solid building. I
13 believe Mr. Kostelac can speak to that particular-

14 CHAIRPERSON GRIFFIS: I don't think we need - I
15 mean, it's not that important-

16 MR. FARMER: Just out of curiosity.

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. FARMER: Okay.

19 CHAIRPERSON GRIFFIS: I do that, that's the problem.
20 Okay.

21 MR. FARMER: So, noting that, that puts the building
22 and the site itself present a practical difficulty and which we
23 are trying to address in this particular design.

24 In terms of the Reed-Cooke overlay, again, it was
25 the purpose - the Zoning Commission clearly expressed that it was

1 its purpose to retain existing housing, to create new housing
2 opportunities, while diminishing and lessening the former
3 industrial impacts in that particular area.

4 It also took great pains to state that those
5 businesses, which contribute to the community which are necessary
6 and desired by this community should be retained, and we believe
7 we have addressed those particular points in this design.

8 No one is being displaced in terms of housing by
9 this particular project. We're adding 13 residential units with
10 adequate parking. The number of cars which this will produce
11 will not have a measurable effect on the level of traffic in the
12 area.

13 Again, there's nothing that's going to occur
14 outside this site, which will have an adverse effect in any way
15 on any of the neighbors or the competing businesses.

16 We would also note that it meets the purposes of
17 the comprehensive plan, in terms of providing for additional
18 housing and as well, we believe that it meets the overall scheme
19 as envisioned by the Reed-Cooke overlay as established by the
20 Zoning Commission.

21 CHAIRPERSON GRIFFIS: Except for the Reed-Cooke
22 overlay says maintain appropriate heights.

23 MR. FARMER: Well, I guess what we are thinking in
24 this particular juncture is looking at the comparative heights of
25 the buildings in the neighborhood and considering the topography,

1 we believe it is appropriate.

2 That was not - it is not giving us an absolute.
3 Again, it is built as a special exception, in order to allow that
4 type of dwelling, and again, part of the height concern here, we
5 did have to set this building back to be able to use 13 usable
6 affordable units that would allow the light to get into the
7 street, and that dictates, I think, absolutely where the height
8 limit is as we see it in our design.

9 CHAIRPERSON GRIFFIS: Okay, and I think that's a
10 very important point that you bring up, that it is one special
11 exception, and it is spoken to in the Reed-Cooke overlay as
12 appropriate height, which although they attach a measurement to
13 it, there is that - let's say flexibility; perhaps others would
14 not agree with me on that.

15 One quick comment on the point you just said,
16 affordability of units, I think you meant marketability, do you
17 not?

18 MR. FARMER: It is - marketability is obviously a
19 concern. We've had discussions with the members of the buildings
20 that-

21 CHAIRPERSON GRIFFIS: But you're not providing
22 affordable housing in this-

23 MR. FARMER: Well, again, I think as you noted in
24 previous cases, who knows what affordable is-

25 CHAIRPERSON GRIFFIS: Well, we've had cases that you

1 can define it, where we have - this board has great difficulty
2 where there's people coming in and saying we're going to provide
3 affordable units, and in fact, in the case before, which I don't
4 like to speak to, necessarily, they spoke about the economic
5 affordability, and there was - they did not present it as this
6 was coming in at an affordable level, as if an income level would
7 be marketed and stuck to in terms of the sale. It's a whole
8 different dynamic product.

9 MR. FARMER: That is correct.

10 CHAIRPERSON GRIFFIS: And I don't think we were
11 assuming that these were affordable, so - but I don't want to get
12 any confusion with that.

13 MR. FARMER: You are correct, sir.

14 CHAIRPERSON GRIFFIS: Last time also, also, HUD
15 wasn't providing lap pools.

16 [Laughter.]

17 Okay. Mr. May?

18 COMMISSIONER MAY: Dish antennas, yes, but not lap
19 pools. No, I'm glad you clarified that point, because we don't
20 want it to go into the record that somehow this is supposed to be
21 affordable housing. I don't think that the applicant is - I
22 think you're saying very clearly you're not putting this forward
23 as "affordable housing."

24 MR. FARMER: That's correct.

25 CHAIRPERSON GRIFFIS: And just for the record, a

1 probably larger picture than this, we are very strict in terms of
2 if we accept an affordable argument in terms of the practical
3 difficulty, if that is part of an application.

4 I mean, we ask for very stringent paperwork that
5 shows how it's going to be reached, what kind of income levels
6 and how you're going to cap it, and how you're going to actually
7 market it.

8 So, that being said, we can move on. Any other
9 questions? I'm sorry, I interrupted you, so you can continue.

10 MR. FARMER: No, we're complete.

11 CHAIRPERSON GRIFFIS: Okay. Are you calling any
12 other witnesses?

13 MR. FARMER: No, we're not.

14 CHAIRPERSON GRIFFIS: Okay. Any questions at this
15 time? We can always return back of course.

16 MEMBER ETHERLY: Mr. Chairman, just to make sure I'm
17 clear. I think I'm seeing the linkage that Mr. Farmer and the
18 applicant are trying to draw on this issue of topography, but it
19 might be useful to have Mr. Kearley and pardon me if I
20 mispronounced that, but run through that very briefly just one
21 more time.

22 The height, if I understand you correctly, the
23 argument or the suggestion is that the height is not so much of a
24 concern because of the topography of the lot and that general
25 vicinity, such that the visual impact of it is mitigated

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1 substantially, correct?

2 MR. KEARLEY: Exactly. In terms of we tried to -
3 and when you talk about the true height and not take topography
4 in mind, we tried to stay consistent to what was happening across
5 the street, but since we actually - it slopes down to our site,
6 the actual impact will be less and also by the way, we carved out
7 the building, I mean we could've probably 20 units in this
8 building, but we made the attempt not to have the canyon effect,
9 and to bring natural light into all the units, by carving out the
10 greater part of that building in a different manner by doing
11 that.

12 So, I think in terms of the height on Champlain, we
13 would have quite a bit less of an impact than other developments
14 that are going on in there.

15 MEMBER ETHERLY: And so once again, from the Hoffman
16 development, coming back, that is the slope-

17 MR. KEARLEY: The slope goes from north to south,
18 from north to south, from high to low.

19 MEMBER ETHERLY: Okay.

20 MR. KEARLEY: So, as you travel down Champlain
21 Street, you're getting lower and lower and lower.

22 MEMBER ETHERLY: Okay.

23 MR. KEARLEY: Okay, and it also slopes from west to
24 east, so as you go this way, you're getting lower also.

25 MEMBER ETHERLY: Gosh, okay.

1 MR. KEARLEY: You know, it's not - you're not
2 dropping down 20 feet or anything like that; we're not trying to
3 imply that, but we're just saying that this isn't a true
4 indication because it does - it might come down five or six feet
5 as you cross the street.

6 MEMBER ETHERLY: Okay.

7 MR. KEARLEY: And if you've ever walked through that
8 Hoffman site and that pedestrian, you can see all those steps,
9 how they come down as you go through that pedestrian park, which
10 is right here. It slopes down significantly at this point. So-

11 MEMBER ETHERLY: Okay. So, perhaps this is more of
12 a hypothetical question, but if you're progressing along and
13 pardon me, colleagues for forgetting my Adams Morgan landmarks,
14 but if you're progressing along that main thoroughfare -18th?

15 If you're progressing along 18th Street, and on the
16 main strip in front of what will be the Hoffman Loft development-

17 MR. KEARLEY: Sure.

18 MEMBER ETHERLY: Do you anticipate being able to see
19 the rooftop or the upper portions of the addition to this
20 property?

21 MR. KEARLEY: I don't believe you will be from 18th
22 Street until you get to that opening which the pedestrian access
23 gives you.

24 MEMBER ETHERLY: Okay.

25 MR. KEARLEY: It just in terms of the site lines,

1 those are three-story town homes right there, and maybe even four
2 stories in some cases, I'm not sure, but it's something where I
3 don't - I don't think you would actually view that building until
4 you got to that opening, and I haven't done the studies, but I'm
5 familiar with the area, and that's just - that's - so it's not-

6 MR. KOSTELAC: If I could add a point to that. In
7 trying to stay in keeping with the fabric of the neighborhood, I
8 have walked those streets very carefully and studied the
9 presented - the proposed heights and stuff, and the building is
10 perceived as like in a slight valley from 18th Street, and the
11 only way you can actually perceive this building over the heights
12 of the P and Hoffman project is as you walk through that
13 pedestrian corridor.

14 And it's at some point when you're actually
15 underneath that catwalk which eclipses most of the view, if any,
16 is when you start to appreciate the building, but the fact is
17 that we stepped it back with those roof terraces, it's almost
18 impossible to ever get a glimpse of the top cabanas or any of the
19 upper floors, from almost any vantage point whatsoever. So,
20 they're fairly discreet up there, so-

21 MEMBER ETHERLY: Okay. And if you eliminated the
22 setback, you're certain that you probably could get more units in
23 that property, in the addition.

24 MR. KOSTELAC: Well, if we used the whole volume of
25 the space in terms of we have about a 9,700 square foot

1 footprint, but we're only using in many cases 5,000 in one floor,
2 5,800 in another floor in order to set back, so we can do that.

3 MEMBER ETHERLY: Okay. And if you were not going
4 for the special exception as related to height, where would you
5 be at, where do you believe you would be at, in terms of the
6 number of additional - the number of units that you can get into
7 the property?

8 MR. KOSTELAC: In terms of maximizing the units, I
9 don't know if I could give you an accurate statement on that.

10 You have a particular problem with this building.
11 In other cases, because you can't have fenestration on the two
12 sides, because you're abutting the property line there.

13 So, that was another reason why we did carve up
14 away, so we can get natural light in there, but I think we could
15 get, you know, probably upwards of 20 units passively, something
16 like that, but I'm not - I haven't done the numbers, and I
17 haven't-

18 MEMBER ETHERLY: Okay, so that's if you eliminated -
19 if you eliminated the carving out, but if you kept it to a height
20 level that was within the Reed-Cooke overlay constraints, where
21 would you be at?

22 MR. KOSTELAC: Yes, I'm not sure if we could do that
23 economically with the number of unit - even to get 13, because
24 what you do, is you don't have an opportunity of having the
25 middle portion of the building inhabitable because you have no

1 natural light coming into that.

2 MEMBER ETHERLY: Okay.

3 MR. KOSTELAC: So, I don't think - if we had stayed
4 at the 40 feet, I don't think we could've had a building that
5 worked because you have the majority of the building, or a lot of
6 the building, would not be inhabitable.

7 I mean, you'd take a swaft right through the
8 building that you couldn't get light into. So, I'm not sure if
9 economically, it would've worked.

10 MEMBER ETHERLY: Okay. All right. Thank you.
11 Thank you, Mr. Chair.

12 MEMBER LEVY: Mr. Chair?

13 CHAIRPERSON GRIFFIS: Yes, Mr. Levy?

14 MEMBER LEVY: I'd like to ask, and this question is
15 for whoever it's most appropriate for, but you've talked about
16 the unusual shape of the lot, a little bit about building height.

17 Could you talk to me a little bit about the floor
18 area ratio requirements and how that's tied to the condition of
19 the site?

20 MR. FARMER: If I may? The FAR that's being
21 produced by the addition of this building is really a product of
22 it being, as I say, a vertical development, per se.

23 We are retaining the total existing mass of the
24 existing building. The building is already over FAR. The
25 required FAR is 1.8. It's at 1.9. So, any new housing which

1 would be produced would require a variance, per se.

2 CHAIRPERSON GRIFFIS: Do you want to follow up with
3 that, Mr. Levy?

4 MEMBER LEVY: I'm not sure where to take it at this
5 point, so I'll just leave it there for now.

6 COMMISSIONER MAY: Could I follow that while you
7 have that thought?

8 CHAIRPERSON GRIFFIS: Yes, please.

9 COMMISSIONER MAY: So, since it's already - you're
10 going to have to do a variance anyway, the thought was that since
11 it's already at 1.9, that you would add another 2.1?

12 MR. FARMER: I think what we were attempting to do
13 is what makes the most sense in terms of a doable project in this
14 particular juncture.

15 It wasn't a matter of just doubling the FAR, but in
16 trying to develop a practical livable critical mass of housing,
17 that's where we came out.

18 MR. KOSTELAC: I'd like to follow up on that a
19 little bit if I could. I had the luxury, prior to having this
20 team together, to study this project from a different angle with
21 different architects at lower heights, and one of the several
22 things we tried to bring together and failed at the original
23 lower schemes that were allowable by right, was parking was a
24 consideration, a substantial consideration in the needs of this
25 neighborhood.

1 That - the building was built as a parking garage,
2 and it was built to its full maximum ability that we had. I had
3 no right, by right to add on anything to that.

4 In setting aside a substantial amount of the second
5 floor for parking, it necessitated that we, you know, take air
6 space, and that put us front of the questions of needing
7 variances of various types.

8 I think parking is critical to that neighborhood,
9 and although we had 78 parking credits available to us in the
10 down zoning that has happened through the history, we still have
11 integrated 13 parking spaces for 13 units, but that accommodation
12 did mean that we would have to raise the units up.

13 The second layer that added us to configure it the
14 way it is, is bringing light into those units as well.

15 The third thing that brought it to this particular
16 massing structure was the idea of integrating roof gardens and
17 creating green space within the City, so that every living space
18 had an adjacent green space.

19 So, I think those are very amenable things to bring
20 to a residential structure in the neighborhood, and it was from
21 those three essential things, I thought, that were critical to
22 the involvement of a building of this type.

23 COMMISSIONER MAY: Okay. That answers my side of
24 it. David, back to you.

25 MEMBER LEVY: No, I'm through, thanks.

1 CHAIRPERSON GRIFFIS: Okay. Is there a mechanical
2 penthouse on this building? I know there's the stair enclosure
3 that goes up through.

4 MR. KEARLEY: There will be some units on the roof,
5 but not necessarily a structure that would enclose that. We have
6 - on the first floor, we're going to have some more utilities
7 come in. We're going to have some space set aside for that.

8 CHAIRPERSON GRIFFIS: And where would you anticipate
9 units on the roof to be? On the stair?

10 MR. KEARLEY: We anticipated them being over on this
11 side right here. I think it was indicated on the roof plan, if
12 I'm not mistaken.

13 CHAIRPERSON GRIFFIS: Oh, are these the - you know,
14 I always see those as nice walking piles that - okay, they're not
15 labeled, but they're obviously there. Okay.

16 My concern was that we're looking at numerous
17 penthouses, but in fact, as there's no story limit in the R-5, be
18 that we're in - that that would be an additional story, in my
19 interpretation of the livable units that are there, there would
20 be one penthouse on the enclosing the stair, unless the Board
21 Members see it differently.

22 MR. KEARLEY: The stairs up there? The stairs are
23 all internal on that level. The stairs don't go up into that -
24 where the pavilions are. It's all internal.

25 CHAIRPERSON GRIFFIS: No, I understand that, but on

1 the plan that you have up are even A107-

2 MR. KEARLEY: Sure.

3 CHAIRPERSON GRIFFIS: You have a large stair. Where
4 is that going to?

5 MR. KEARLEY: The stair comes to here, and then you
6 get into the units through - from that point. So, it doesn't go
7 above that.

8 CHAIRPERSON GRIFFIS: I see, I see.

9 MR. KEARLEY: It services this walkway, which gets
10 you into these units. There's some other stairs here, which you
11 get to this place that get this unit. So, any access to these
12 spaces into the garden spaces happen within a unit.

13 CHAIRPERSON GRIFFIS: You have a communicating stair
14 within the units.

15 MR. KEARLEY: Exactly.

16 CHAIRPERSON GRIFFIS: Is that square stair an egress
17 stair?

18 MR. KEARLEY: This stair here?

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. KEARLEY: That will be.

21 CHAIRPERSON GRIFFIS: Okay, and that just goes up to
22 the main roof level?

23 MR. KEARLEY: Exactly.

24 CHAIRPERSON GRIFFIS: I see.

25 MR. KEARLEY: Exactly.

1 CHAIRPERSON GRIFFIS: Okay. Because we wouldn't
2 want trouble with Section 411.

3 MR. KEARLEY: No, that's - anything that gets you on
4 the roof is internal to the pavilions.

5 CHAIRPERSON GRIFFIS: Okay. All right then. I
6 think we can proceed on. Oh, I'm sorry. Please.

7 COMMISSIONER MAY: All this discussion has added
8 questions in my mind. This isn't really relevant to zoning, but
9 I just have to understand it.

10 What is the structural system that's going to allow
11 you to build this thing, you know, for 50 feet above - is it
12 just-

13 MR. KEARLEY: The building, itself, could support
14 without any additional reinforcement of the columns, two
15 additional floor. So, we'll have to do some minimal
16 restructuring of the columns in terms of having a steel structure
17 which will be lifted up from the existing roof structure, and
18 then transferring the loads to those columns.

19 So, the existing building structure would probably
20 take - what, you would talk to a structural engineer on that.

21 MR. KOSTELAC: I could answer that point. I have
22 engaged preliminary structural engineers to look at those very
23 basic points, and because of the true granite nature of those
24 exterior walls, that they have a limitless bearing capacity
25 relative to the types of things that we were building, so we

1 could load those up indefinitely.

2 A few key columns in the interior may have to be
3 fortified. The building having been built under a different era
4 when they oversized things for a parking garage of heavy types of
5 cars is already overbuilt as it is.

6 The additional help we're going to try to get is a
7 few carefully chosen interior columns that do give some extra
8 strength added to them. There is various different ways to do
9 that.

10 At this time, we haven't picked a particular
11 method. We're looking at something that's very unobtrusive to
12 the tenant in the first war that's guiding our hands, but because
13 we have the exterior walls and some already sturdy interior
14 components, the add-on will not be too burdensome, I hope.

15 COMMISSIONER MAY: It looks very, very complicated.
16 You've got a lot of - what looks like essentially bearing wall
17 construction on top of an existing slab that's supported from
18 underneath. So, you - I mean, is that not how the rest of it is
19 structured? Is it not bearing wall?

20 MR. KEARLEY: The rest of it will be structured
21 basically with steel high beams and different, such like that.
22 You'd have bearing walls on the outside, which will be resting on
23 the existing granite structure, and then internally, we'll have
24 the frame - basically frame construction with steel, which will
25 then transfer the loads to the existing columns.

1 COMMISSIONER MAY: Okay. Well, it's not a zoning
2 question, as I said.

3 CHAIRPERSON GRIFFIS: Well, I guess, Mr. May, what
4 you're actually bringing up is the issue of what level of
5 drawings that we actually see when they're coming in, and it's
6 mostly anticipated that - well, it's often anticipated that
7 you're actually at the permit stage, and often are the applicants
8 are referred in for the zoning administrator, and my concern is
9 not necessarily - well, twofold; one, that there's a firm
10 understanding at this board of exactly what is being proposed and
11 what is being asked for in terms of relief. I think we can
12 possibly get there with this.

13 But secondly, I have a great concern that perhaps
14 we don't get to some of the specifics or this changes
15 dramatically.

16 That's burdensome on you and it's also burdensome
17 on us, because anything that varies from this, if approved, any
18 variation is going to have to bring you back to us, which
19 obviously clogs our schedule and obviously costs you time and
20 money, so it's a waste all around.

21 So, that - Mr. May has hit on something that
22 actually gives me some pause in terms of not having kind of a -
23 well, a more developed plan at this area, but you know, I'm ready
24 to proceed on this, because I think what we're obviously faced
25 with is what's presented before us, and in that they are area

1 variances, I think that perhaps we can cover a lot depending on
2 which way things go with this.

3 COMMISSIONER MAY: I think to echo that point, you
4 have the advantage and possibly the disadvantage of dealing with
5 a number of architects on the Board, who, at least when I look at
6 this, I see enormous structural complications to the way it's
7 been designed.

8 And it's not to say it can't be worked out and that
9 it won't be worked out very well, but there is, as the Chairman
10 has pointed out, the potential for significant modification from
11 what we see.

12 Now, I would hate to send you back to the drawing
13 board and have you do a full structural design, then come here
14 and have to, you know, go away and redesign or what have you,
15 because what you've asked for can't be approved.

16 So, you know, we are, I think, inclined - I agree,
17 I'm inclined to move ahead with what we have. I would point out
18 that there are some simple things that it would've been nice to
19 have in being able to evaluate this. First of all, you know,
20 actually having plans in advance of today-

21 CHAIRPERSON GRIFFIS: Well, actually, let me clarify
22 that. That is actually an internal problem. My understanding is
23 that these drawings were submitted with an application, which I
24 should've brought up at the very beginning-

25 COMMISSIONER MAY: Okay.

1 CHAIRPERSON GRIFFIS: -and I had forgotten, and so
2 it's - it was an internal problem and just to be clear, we got
3 the drawings this morning. So, some of our apprehension, let me
4 take a moment for that just to sink in, was our reviewing of
5 these - I think we had sufficient time, but it wasn't as relaxed
6 of a time as we might.

7 COMMISSIONER MAY: Yes, I don't think that the fact
8 that we got it this morning has any bearing on how competent a
9 review can be performed, particularly given that there's certain
10 information that I would like to have seen that is not here, so
11 it wouldn't have made a difference.

12 Specifically, there doesn't seem to be a dimension
13 anywhere on it, and when it comes to issues like the building
14 height, it'd be nice to know where you're measuring it from and
15 things like that, particularly when you're dealing with a sloped
16 site, and there are rules for how that's done. I assume-

17 MR. KEARLEY: We're measuring it from the center
18 point of the front of the building; that's where we're measuring
19 that from.

20 COMMISSIONER MAY: Okay, and I think that's the way
21 the rules are, but it's nice to see that here on the drawings.
22 It makes it easier to review and evaluate.

23 The prepared statement makes the assertion that
24 this lot is irregular in the extreme or something to that effect,
25 and the BZA hears cases all the time about irregular lots, and I

1 still haven't seen enough information there to understand why
2 it's so - why it's deemed so irregular, because a lot of
3 irregularity goes away with size, and you've got a fairly
4 significant sized lot here, so much so that you can't fully
5 develop across it without having to put courtyards into it,
6 essentially.

7 So, I was wondering - I mean, again, you know, this
8 goes back to the basic zoning case here. What is so unique and
9 irregular about this lot other than the fact that it's got a
10 couple of skewed walls?

11 MR. FARMER: Well, you got two factors, and I think
12 it's more than just a couple of skewed walls, per se.

13 This existing structure, as we say, occupies most
14 of that lot, 97 - between 97 and 98 percent. The lot itself is
15 not perfectly square. We do have to deal with those existing
16 conditions, as presented from a lot line to lot line basis.

17 That, to my mind, and from my knowledge of previous
18 other cases, is an irregularity and a substantial irregularity.

19 COMMISSIONER MAY: And I wanted to clarify one other
20 point, which was made before with regard to alternate schemes
21 that have been studied.

22 You did go through the exercise of trying to
23 balance, you know, what FAR could be achieved or how to make
24 livable units and balancing that out against the cost of
25 development of the property and so on and so forth, and so that

1 this is not, you know, the product of architectural fancy, so
2 much as a hard exercise in the economics of developing the
3 property. Is that what I heard?

4 MR. KOSTELAC: Well, to explain that, the studies
5 that we did, the building by right could not have any additional
6 height to it, and so we were, in trying to develop what we could
7 do within that existing floor, it was so long and deep and that
8 was certainly a consideration.

9 The fact that we wanted to retain the original
10 building, which as everybody's been saying, has been built with
11 its granite walls to the wall structure prevented us from getting
12 any light and windows into adjacent lots.

13 So, I had a lot of respect for the original
14 building and have tried to preserve it throughout the process.
15 So, that was really restricting our hand on those points
16 specifically.

17 COMMISSIONER MAY: Okay, thank you.

18 CHAIRPERSON GRIFFIS: That calls to mind an
19 interesting point is by right you could take this building down,
20 correct?

21 MR. KOSTELAC: Are you asking could we demolish it?

22 CHAIRPERSON GRIFFIS: Right.

23 MR. KOSTELAC: Well, I-

24 CHAIRPERSON GRIFFIS: That's a yes or no. I mean,
25 there's nothing stopping you from taking the building down,

1 right?

2 MR. KOSTELAC: Well, except for displacing a person
3 who-

4 CHAIRPERSON GRIFFIS: No, no, I'm not advocating for
5 that, but just to make clear the fact that part of your
6 uniqueness is going to look, you've got this structure that is
7 existing.

8 It's obviously non-conforming. It has
9 architectural integrity. It has a community-attachment view and
10 the business that's there, so I just wanted to bring that out
11 again because I think it does go to some of the uniqueness of
12 this.

13 And I think the Board is needing, as I am, a little
14 help in pulling all the pieces together here, but bottom line,
15 you know, an aggressive developer that wanted to put up a new
16 building that had no character whatsoever, would take this down
17 and maximize it as much as possible.

18 MR. KOSTELAC: If I could add to that, it was my
19 understanding that this particular property, when it was up for
20 sale, it was understood that it would be torn down and the
21 tenant, the current tenant did come to me and ask me if we could
22 work something out to keep him there-

23 CHAIRPERSON GRIFFIS: I see.

24 MR. KOSTELAC: -and so it was slated for demolition
25 and I thought it would've been a tragic loss.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. KEARLEY: In terms just architecturally of the
3 site, too, in terms of - I don't think the shape is unique; it's
4 basically a rectangle, but since you do - are abutting the
5 properties on each side, those gave some unique ways to solve
6 that problems into getting the units in there.

7 So, I think in terms of dealing with existing
8 structure, and I think we're pretty aware of how the structure -
9 it's not going to be an easy solution in terms of getting this
10 done.

11 I think we're both aware of - we've created
12 something, which is not sort of the basic envelope that most
13 people would've done on that, but I think we wanted to create a
14 significant piece of architecture, and it's sort of an important
15 piece of architecture for Adams Morgan, and I think we created
16 some - we did create a unique building and an interesting
17 building, but there's also certain things in structurally
18 associated with that that we're going to have to solve, and we
19 have every intention of solving.

20 CHAIRPERSON GRIFFIS: Well, let me just a quick
21 clarification on that, because one, this Board is very interested
22 in good design, and we all have different opinions on what that
23 actually is, but certainly we like products that go to the
24 community, but when we're talking about uniqueness, we're not
25 talking about design.

1 I mean, it is a specific test in the zoning that
2 goes to the uniqueness that creates the practical difficulty, and
3 that uniqueness has to be growth out of the site, or we can get
4 into other issues, but I won't.

5 So, what we need to do, and what Mr. Farmer is
6 establishing for us, is how the site is unique that, therefore,
7 creates practical difficulty that you cannot do what you want or
8 have to do because of zoning regulations get in the way-

9 MR. KEARLEY: Yes, well, by keeping the existing
10 building, we couldn't do anything, if we had left that building
11 intact. I mean, we could've started over, but we chose not to,
12 and I think that goes to the uniqueness of the site that we did
13 want to keep that existing building.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. KEARLEY: And by keeping it, we had to move
16 forward in this manner, and that creates the uniqueness of what
17 we tried to do, so-

18 MR. FARMER: And again, I think the point is it's a
19 structure of some significance. While not historic, it is
20 important to the community, it's important architecturally, we
21 believe, as well, so that's again-

22 CHAIRPERSON GRIFFIS: I would agree. I mean, I
23 think it has - it's a known character on that block not to
24 mention that the whole design premise that is coming out here is
25 this eclectic nature of fitting in but being unique in terms of

1 the area.

2 It wouldn't have followed that direction if you
3 decided to take that building down, because I think it is
4 somewhat of a neighborhood landmark, if not a designated one.

5 Okay. Let's move on and we may just take a quick
6 break here just to stretch our legs as the afternoon wears on.
7 It's always a long day for us here, but let's go to Office of
8 Planning report, and welcome our, indeed, representative from
9 planning.

10 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman and
11 Members of the Board. I'm Maxine Brown-Roberts, representing the
12 Office of Planning. The subject site has a base zoning in the R-
13 5-B and is within the Reed-Cooke overlay district.

14 Generally, the purpose of the Reed-Cooke district
15 is designed to protect existing housing, provide for new
16 development and encourage small scale businesses' development.
17 It does not affect the residential use. This district limits the
18 height of buildings in the R-5-B to 40 feet.

19 Prior to their adoption of the Reed-Cooke overlay,
20 the subject property was in the C-M-2 district and became a non-
21 conforming structure as to lot occupancy and FAR when their
22 zoning was changed to R-5-B.

23 Regarding the lot occupancy, the zoning regulation
24 allows a maximum of 60 percent for developments in the R-5-B
25 district. The existing building has a lot occupancy of 97.2

1 percent. The proposed addition will be entirely on top of the
2 existing building.

3 The subject property is unique as it is developed
4 78 years ago as a industrial commercial building under the yard
5 requirements of those zones and became a non-conforming structure
6 in the new residential zone.

7 If the development were required to meet the lot
8 occupancy requirement, it would require demolishing the building
9 and reconstructing a new building.

10 Retaining the existing lot occupants of the
11 building would not be detrimental to the public good, as it has
12 existed in this manner for a long time and has not been a
13 problem.

14 Retaining the existing building with retail use and
15 add-in residential use would be consistent with the goal of the
16 comprehensive plan to encourage residential and retail
17 developments in order to increase the number of residents and
18 community retail uses within the Reed-Cooke area.

19 Regarding FAR and expanding a non-conforming
20 structure, the existing building has an FAR of 1.9, and the
21 maximum allowed for FAR in R-5-B is 1.8. As would the lot
22 occupancy requirement, the building became non-conforming as to
23 FAR, when the zoning on the property was changed.

24 Due to the historic character and its contribution
25 to the architectural value to the community, the building has

1 been retained and residential use added to the building.

2 Again, if the building were to be demolished, it
3 would be lost to the community.

4 The request to increase the FAR and in effect the
5 height of the building will not be a detriment to the public good
6 as the addition would allow for the retention of the building
7 that contribute the architectural character of the community.

8 The proposed increase in FAR would allow for an
9 addition that will maximize impacts along Champlain Street and
10 the surrounding area by setting back each additional level from
11 the parapet line.

12 This allows for additional light to the street as
13 well as to each unit and the intent purpose and integrity of the
14 zoning regulation to provide adequate lighting for quality of
15 life for residents, the development would be enhanced.

16 Regarding the special exception, the Reed-Cooke
17 overlay district specifies the building should have a height
18 limit of 40 feet or four stories except in specified places.
19 This proposal would increase the height by approximately 40 feet
20 for a total height of 69.7 inches.

21 The increase in height of the building is justified
22 as the development is providing parking for the residents, set
23 backs from the street for the upper levels and private and public
24 owned space areas and retaining the existing residential use.

25 The application meets the requirements of Section

1 1402 in that in that vehicular access and parking will be
2 adequate and the proposal will not generate any noise or outdoor
3 storage for materials.

4 The proposed uses will not be detrimental to
5 residents living in the areas or visitors to the area. The
6 Office of Planning, therefore, recommends that the Board of Zone
7 Adjustment approve the variances and special exception requested.

8 The Office of Planning also supports and recommends
9 that the Board adopt the conditions outlined in the Memorandum of
10 Understanding between the applicant and the community. Thank
11 you, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Thank you very much. You
13 didn't happen to attach the memo, Memorandum of Understanding -
14 I'm sorry.

15 MS. BROWN-ROBERTS: I'm sorry, I thought it was
16 something that the applicant was going to submit into the record,
17 so-

18 CHAIRPERSON GRIFFIS: Right, I just wanted to make
19 sure that we weren't missing anything, because I didn't see it.

20 MEMBER LEVY: Mr. Chair, is there a revised planning
21 - I don't have a revised Office of Planning report. Was that
22 submitted?

23 MS. BROWN-ROBERTS: Yes, that was submitted last
24 Friday, the supplemental report, which addresses the issues
25 concerning height.

1 CHAIRPERSON GRIFFIS: Okay. What was the date on
2 that?

3 MS. BROWN-ROBERTS: April 25th.

4 MEMBER LEVY: Do you have that?

5 CHAIRPERSON GRIFFIS: No.

6 COMMISSIONER MAY: I've got a copy of it here. I
7 may be the only one, because the report in the file is not-

8 CHAIRPERSON GRIFFIS: Does the applicant have a copy
9 of the revised report from the Office of Planning? All right, do
10 you want me to repeat the question?

11 MR. FARMER: Yes.

12 CHAIRPERSON GRIFFIS: Did you - have you received
13 and reviewed the supplemental report from Office of Planning
14 dated April 25?

15 MR. FARMER: Yes, I have.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. FARMER: I believe the office received it, but
18 we didn't get our copies today.

19 CHAIRPERSON GRIFFIS: I lost my copy? I would
20 gladly say I lost my copy, but this doesn't look familiar
21 whatsoever. Oh, is that right. Okay, sorry. Well, okay.

22 I think - I mean, obviously that's why there's a
23 dimension of having public testimony and the persons here to
24 guide us through it. I think it's fairly clear - obviously, the
25 Board Members all read the entire submittal, the original

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1 submittal which was very inclusive of all the issues.

2 Two things though, you did talk to the Reed-Cooke
3 Neighborhood Association, was there any other additional
4 information with that, in that you've indicated that perhaps on
5 May 7th, they were voting on this?

6 MS. BROWN-ROBERTS: Apparently, we had a meeting in
7 the office with some members of the community, but it was my
8 understanding that the Reed-Cooke did not - Reed-Cooke's
9 Association did not take a formal vote, and I think the president
10 is here, so he could address that.

11 CHAIRPERSON GRIFFIS: Okay, good. All right, any
12 other questions from the Board of the Office of Planning? Does
13 the applicant have any questions of the Office of Planning? Or
14 cross-examination I should say.

15 COMMISSIONER MAY: I have a minor question on the -
16 Page 2 of the original report, there's the summary that says lot
17 occupancy existing 97.3 and provided also 97.3, but is that
18 technically not correct? I mean, is the extension that's over
19 the alley high enough that it somehow qualifies as a-

20 MS. BROWN-ROBERTS: I think that was an error on my
21 part. Ms. Sansone just informed me that the overhang should be
22 included.

23 COMMISSIONER MAY: Yes-

24 CHAIRPERSON GRIFFIS: Should not be included?

25 COMMISSIONER MAY: Should be or should not be?

1 MS. BROWN-ROBERTS: Should be.

2 COMMISSIONER MAY: Should be, so then it's 100
3 percent.

4 MS. BROWN-ROBERTS: It's 100 percent.

5 COMMISSIONER MAY: Okay.

6 CHAIRPERSON GRIFFIS: And what's the basis for that?

7 COMMISSIONER MAY: Who are you asking?

8 CHAIRPERSON GRIFFIS: Corporate counsel.

9 MS. SANSONE: The definition of lot occupancy in
10 building area.

11 CHAIRPERSON GRIFFIS: That's a fun one we've been
12 around before. Okay. All right. Applicant have any cross-
13 examination or questions of the Office of Planning?

14 MR. FARMER: No, we don't.

15 CHAIRPERSON GRIFFIS: Okay. And you have both of
16 the submissions, you've had time to review them? Okay. Do you
17 want to speak quickly to - well, no let's continue on. ANC
18 report. I do not - this may be the tragic - well, let's - I
19 don't have an ANC report. Does anyone else have an ANC report?
20 Are you aware of an ANC report on this?

21 MR. FARMER: We are aware that they were attempting
22 to get one out. We've called them; we've tried to get one
23 delivered to us as well as to you.

24 We did meet with the ANC and they did vote on April
25 16th to support the project unanimously. We've called, we've e-

1 mailed, we've left messages, and we still don't know where it is.

2 CHAIRPERSON GRIFFIS: Right. Okay, and there's no
3 one here today from the ANC, is that correct? Okay. You know,
4 we like to give them an opportunity at least.

5 And frankly, I would anticipate something of this
6 nature, just I'm sure you have - and I know it's in the record,
7 actually, you've presented it in front of the ANC. I cannot
8 imagine that they did not take great interest in this, knowing
9 some of the issues surrounding the area.

10 So, that being said, there was indication that
11 their vote was, in fact, in the affirmative for approval of the
12 project, and that is based on the presentation that we're seeing
13 today, the similar presentation that was done. Okay.

14 I don't have any other government reports listed,
15 unless anyone else has theirs, I think we can move on and ask -
16 is there anyone else here to testify this afternoon. Yes, sir?

17 Very good, why don't we have you folks sit down,
18 and I'm going to have anybody that's going to testify right now
19 either in support or in opposition of the application to come to
20 the table.

21 Good afternoon.

22 MR. BRADFORD-EL: Good afternoon.

23 CHAIRPERSON GRIFFIS: I'm going to have you just
24 turn on the mike that's in front of you. That would be great,
25 have you introduce - actually, just push the - there it is, and

1 let me just - have you filled out witness cards?

2 MR. BRADFORD-EL: Yes, sir.

3 CHAIRPERSON GRIFFIS: Oh, very good. Then, you're
4 welcome to proceed and introduce yourself.

5 MR. BRADFORD-EL: My name is Darnell Bradford-El.
6 I'm the president of the Reed-Cooke Neighborhood Association, and
7 good afternoon, Mr. Chairman and the Board Members, Office of
8 Planning and the Staff as well.

9 I don't have written testimony. I'm not familiar
10 with your procedure, and I'd like to know if the things said here
11 can be followed up, will the record remain open or will a vote be
12 taken today?

13 CHAIRPERSON GRIFFIS: Well - and that's an excellent
14 question. We haven't - we usually decide that after the -
15 towards the end of the case. I think - but I can't predict at
16 this point what we would ask.

17 If you want certain things submitted into the
18 record, we will take that recommendation. If we need to keep the
19 record open, that's what we'll end up having done, and if not, we
20 would obviously proceed today, so-

21 MR. BRADFORD-EL: I'd just like to go on record in
22 saying that the Reed-Cooke Neighborhood Association,
23 approximately 200 members out of a roughly 5,000-person
24 population and one of the main contributors to the creation of
25 the Reed-Cooke overlay.

1 I'm fortunate enough to be on the board of the
2 Reed-Cooke Neighborhood Association when that was done, and I'm
3 hearing a lot of new interpretations of what we meant by the
4 things that we said in it, and I'd like to set the record
5 straight on a few of them, so that some of the presumptions get
6 off the table, because those premises causing people to make
7 mistakes.

8 And one of those mistakes is that something very
9 serious is happening here, that the community has truly been left
10 out of this process, and you know, I don't like to accuse people
11 of bad motives, and so I won't do that, and I'll just give the
12 benefit of the doubt that sometimes when you don't know about
13 processes and procedures, you don't follow them.

14 Nevertheless, the impact is the same on the people
15 who are affected by the procedures that were put together as a
16 prophylactic for our interests, and I just want to put the
17 overlay in a little bit of historical context since we keep
18 talking about history.

19 The historical context is that before the overlay,
20 we were being encroached on as a neighborhood by a bulging
21 commercial development, principally the Ed Morgan effort, the
22 Calarama (ph.) Skating Rink, which later became Citadel Center,
23 and some of the other interests along 18th and Champlain Road
24 border.

25 So, as a community organization, we've worked very

1 hard to maintain the residential quality and what may be arguably
2 one of the most economically striated and culturally diverse and
3 dense communities within our city, with a unique flavor as a part
4 of Adams Morgan.

5 And it's our home, and we've been there for quite
6 some time, longer than the granite buildings, some of us, and
7 we're really concerned that the overlay be taken seriously
8 because we set it up to protect us from the commercial
9 encroachment, and now we find ourselves with the language that we
10 used to protect ourselves with being confronted with a major
11 upscale real estate encroachment, that will - if unabated had the
12 effect of gentifying our community.

13 And so when we see these projects pop up, we're not
14 looking at them as unique within the context of what they
15 represent for that particular site; we're looking at them in the
16 context of how does this impact the overall residential quality,
17 the quality of life of the people who have lived and worked and
18 own property or rent in that community.

19 One of the designs or intents under the
20 comprehensive is to maintain the racial balance that exists
21 there. Champlain Street is predominantly, at this point, upscale
22 all Spanish-speaking Americans.

23 If allowed - and most of those are renters, they
24 don't own, and if allowed to proceed as it's going, they're going
25 to be wiped out of Champlain Street; they're going to be priced

1 out of Champlain Street, priced out of Reed-Cooke which has the
2 domino effect that we saw in Southwest and Georgetown, et cetera,
3 et cetera.

4 We don't want that to happen in our neighborhood,
5 and one of the things that we hoped to prevent it with was the
6 overlay, but we didn't have the far-reaching vision to see this
7 encroachment, but we were confident that the procedures through
8 the ANC and the BZA were substantial to protect our interests or
9 give us an opportunity to represent ourselves and be heard, in
10 that those things that are in law have some weight.

11 They're not just words that are open for anybody's
12 interpretation to satisfy their personal financial gain, that
13 they must be considered in the light of what their original
14 intent was, and that was to protect the interests of the people
15 living in that community.

16 I'm talking about myself, my children, my father
17 who fought in the war to save this country from, you know, some -
18 and now, in his old age, he has to worry about whether or not he
19 has a place to live.

20 And we are very sorry that this process has gone
21 this far and not included the well-respected and recognized
22 community organization and misrepresented because if you have a
23 memorandum of understanding, which I just got a copy of it today,
24 talking about an agreement between the ANC, the developers and
25 the Reed-Cooke Neighborhood Association; I'm the president of the

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1 Reed-Cooke Neighborhood Association.

2 I just saw it today, and it certainly doesn't
3 reflect anything that I've been authorized to represent on behalf
4 of the organization, the board of directors or the residents of
5 Reed-Cooke.

6 CHAIRPERSON GRIFFIS: Was the applicant in front of
7 you at all for a presentation? Have you seen this project
8 before?

9 MR. BRADFORD-EL: I have seen less than what you
10 have here in the form of a overnight expressed set of drawings
11 without sufficient explanation or details, and again, I go back
12 to, and I'm not suggesting any intent, but-

13 CHAIRPERSON GRIFFIS: No, and I don't want to delve
14 into that, frankly. What I want to get is the substance and the
15 facts. Do you have a regular standing meeting, monthly meeting,
16 quarterly meetings?

17 MR. BRADFORD-EL: We have monthly meetings on the
18 second Tuesday of every month.

19 CHAIRPERSON GRIFFIS: Okay. And when you got that
20 package, did you request or was there a request for a
21 presentation from this applicant?

22 MR. BRADFORD-EL: Let me give you the history of
23 that, if you will, so you can understand it.

24 See, right now, we have another developer in the
25 room, Mr. John Holmes, who's the Colortone (ph.) project, who you

1 will see at this table, hopefully with us, because of a very hard
2 driving process that we all had to go through-

3 CHAIRPERSON GRIFFIS: Okay, actually, what I'm going
4 to need you to, and it is specifically in our regulations, we
5 need to stay on point in this application. I can't hear any
6 other kind of information on another application that you've just
7 indicated is pending before us.

8 MR. BRADFORD-EL: Okay. And I said that simply was
9 because I thought this was a less than a very formal process, but
10 I understand it, and I'll stay in line with your process, you
11 know, because that's what-

12 CHAIRPERSON GRIFFIS: I like to have a little
13 informality, but when we've strayed from way out of the
14 regulations-

15 MR. BRADFORD-EL: I understand, fine, fine, fine,
16 fine, fine.

17 CHAIRPERSON GRIFFIS: -and frankly, you may hurt the
18 application that you've indicated you're supporting, so-

19 MR. BRADFORD-EL: No, the point I'm making is that
20 developing in a community like Adams Morgan involves a unique
21 approach to the citizens there because we have historically
22 worked to protect our interests, and we have asked - the ANC is
23 supposed to have a zoning committee in which these processes are
24 supposed to go to first, and from there, they go to the full ANC,
25 and each process involves adequate public notice, timely public

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1 notice. We haven't received timely notice.

2 CHAIRPERSON GRIFFIS: Okay, so you're questioning
3 whether the ANC actually had an advertised meetings, okay.

4 MR. BRADFORD-EL: No, that's not my question. I'm
5 saying that we have not, as an organization and as residents,
6 received an official timely notice-

7 CHAIRPERSON GRIFFIS: Right.

8 MR. BRADFORD-EL: -of either zoning readings or full
9 ANC meeting in which the information concerning a vote on this
10 project was advertised.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. BRADFORD-EL: Because I just found out that we
13 have a unanimous vote for the project when the person who brought
14 it to me, is supposed to be verbally against it.

15 CHAIRPERSON GRIFFIS: Okay. Now, and believe me,
16 it's not the first, and all of us live in D.C. neighborhoods, and
17 we all have special interests in our own associations, so we
18 know, frankly, the politics that are involved, and certainly the
19 importance of having community input.

20 I think it's clear your message of your concern
21 about not having been included, and I think we'll get some
22 additional information from ANC.

23 What I'd like to hear, and you've started to talk
24 about it is, the Reed-Cooke overlay, how this specific project
25 actually doesn't fall or is - I'm sensing, and I've got to say

1 this straight out, but is evoking the opposition from your
2 association.

3 MR. BRADFORD-EL: No, we're not opposing this.

4 CHAIRPERSON GRIFFIS: Are you in support of it?

5 MR. BRADFORD-EL: I'm not supporting it.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. BRADFORD-EL: I'm here to request some due
8 process. It has nothing to do with the content of this proposal.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. BRADFORD-EL: It has to do with the process.

11 CHAIRPERSON GRIFFIS: Good. Let me speak to our
12 process in the BZA, because it is - and I may be flippant on the
13 Board here, but it is very stringent and it is, in fact, the
14 basis of the law and what we have to deal with. There's two
15 points of notification. Did you see any of the postings on the
16 building?

17 MR. BRADFORD-EL: No, sir.

18 CHAIRPERSON GRIFFIS: The orange signs.

19 MR. BRADFORD-EL: No, sir.

20 CHAIRPERSON GRIFFIS: Do you go by the building
21 regularly that you would've seen it?

22 MR. BRADFORD-EL: No, sir.

23 CHAIRPERSON GRIFFIS: So, what you're saying is
24 actually questioning whether this was posted properly.

25 MR. BRADFORD-EL: Yes, sir.

1 CHAIRPERSON GRIFFIS: Which usually comes up as a
2 preliminary matter. Let me tell you that we require submission
3 of documentation that proves posting of the building.

4 In fact, we require a statement, an affidavit of
5 posting and also photographs of posting, and I can show you
6 those. Mine are black and white, so they're not great to look
7 at, but I would ask you to review that, actually, before you go,
8 to make sure that you did not see that.

9 The other is do you live - do you know offhand, do
10 you live within 200 feet of the property?

11 MR. BRADFORD-EL: No, but I've talked to people who
12 have, and they haven't seen-

13 CHAIRPERSON GRIFFIS: Okay, and it's not necessarily
14 important. The piece that I bring up is the fact that where
15 there is also a mailing within 200 feet of the property.

16 We find, on this Board, in my limited here that the
17 orange postings and the sign are the most important because
18 that's where most people look at it. I mean, a lot of people
19 throw away a lot of mail that they assume is junk, so I don't put
20 a lot of reliance on that.

21 I do, however, and take very seriously, the posting
22 of the property. Now, I don't - that is our process and that is
23 our due process in terms of notification and so I wanted to
24 clarify that.

25 We don't have any jurisdiction over the ANC. The

1 ANC is actually part of our process. We have certain criterion
2 that they need to reach in order to hold great weight for our own
3 deliberations, but it's one piece within our entire
4 responsibility and our jurisdiction.

5 Okay. So, what I'll do is have you look at that
6 before you go, but - yes?

7 SECRETARY PRUITT: Mr. Chair, I'd just like to add
8 that we do notify the ANC and the single member district and your
9 council person about this information, so there are three other
10 additional governmental or due process sources that you could go
11 to.

12 MR. BRADFORD-EL: Let me say this, so that I don't
13 appear to be outside of the circle of reason with this, you know,
14 I was - the person who mentioned this project to me first was
15 Denise Wicker, the assistant to Jim Graham, and she mentioned it
16 to me in around January and she had said that she had informed -
17 Dominique, who was a friend of hers, to get in contact with us.

18 And up until March, we had not heard from him, so
19 the ANC representative, our senior member district is Ms. Eleanor
20 Johnson, we haven't heard one word from her about it, and she
21 held a meeting, I understand, a Quality of Life meeting, and the
22 ANC just a few - a couple of weeks ago at which time it was
23 supposed to have been on the agenda-

24 SECRETARY PRUITT: Excuse me, sir, just for
25 clarification on my part. Do you live within the single member

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1 district in which this is located?

2 MR. BRADFORD-EL: Yes.

3 SECRETARY PRUITT: Okay.

4 MR. BRADFORD-EL: Okay. But even if I didn't, as
5 president of the Neighborhood Association, she should have let me
6 know something.

7 And then finally, the ANC, as a full body, and I'm
8 not jumping on that, per se, did not advertise or let us know
9 that they were going to take a vote on this project because - and
10 I didn't know that the Office of Planning was going to make a
11 recommendation on this process, and I think that neither the ANC,
12 the Office of Planning, the single member district or the BZA
13 ought to make a determination without hearing from the community.

14 That's my true feeling.

15 CHAIRPERSON GRIFFIS: Well, you're saying - when you
16 say community, you mean the Reed-Cooke Association?

17 MR. BRADFORD-EL: I'm talking about the community,
18 which includes the Reed-Cooke Neighborhood Association. I'm the
19 only one from the community here-

20 CHAIRPERSON GRIFFIS: Right.

21 MR. BRADFORD-EL: -in this setting, and the handful
22 of people who was at this quality of life meeting and the small
23 number of people at the ANC, which is principally the board of
24 the ANC, does not represent our community.

25 CHAIRPERSON GRIFFIS: I see, but you wouldn't assert

1 yourself as representing the entire community, would you?

2 MR. BRADFORD-EL: I wouldn't be that bold.

3 CHAIRPERSON GRIFFIS: Okay. Well, you bring up an
4 interesting point in terms of hearing from the entire community,
5 and we have certain provisions that we require or we request
6 rather and that is supposed to give it - we also in all that
7 notification take person's testimony.

8 You know, it is interesting that we don't have
9 surrounding homeowners coming down here. What we often find is
10 the people that line up at the door are in opposition and the
11 people in support stay at home and maybe write a letter is what
12 we've found, but be that as it may, we don't have any of that in
13 this case at this time.

14 What are you requesting the Board to do? Are you
15 indicating that we might keep the record open in order for - is
16 your meeting on May 7th?

17 MR. BRADFORD-EL: Let me suggest this. What we are
18 requesting is that rather than make a decision at this point,
19 that you extend this meeting to another time to give the
20 community a time to process this, and - because we don't want to
21 - we're tired of looking at empty warehouses in the community,
22 and we want something in those places, but we want it to have the
23 right impact on the community, and we'd like to work with them.

24 If - Maxine would tell you that I had tried to
25 arrange a meeting with the developer and owner through the Office

1 of Planning to request that they - a request for an extension
2 from you, but my meeting was circumvented by ANC and around, and
3 the time of the schedules was changed, and it was changed at a
4 time that I could not be there, so I couldn't participate in that
5 process.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. BRADFORD-EL: So, we didn't have any
8 representation as an organization, and-

9 CHAIRPERSON GRIFFIS: You didn't have anyone else
10 you could send? Anyway, it didn't happen, so-

11 MR. BRADFORD-EL: Let me - no, that's a good
12 question, because we are a volunteer organization, and we have
13 several projects on the table.

14 I won't mention them for the sake of not going into
15 the records, but we are virtually like the little boy with his
16 thumb in the dam. We're sitting right there, and every time we
17 turn around there's something - I even asked the Office of
18 Planning could we engage into a process that - and I ask you that
19 might do a development moratorium so that we don't have to be the
20 knee-jerk reaction there is to every developer's whim, and that
21 we can come together with something that sets some standards and
22 some plans that support and reinforce what we intended in the
23 overlay, and so that the owners is not on us as volunteers and
24 citizens to have to put our lifestyle aside to respond to the
25 developers who often have big architects and lawyers and deep

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1 pockets to front the activities.

2 So, there probably was somebody who could come
3 here, but we're in the process of changing bylaws, dealing with
4 several major development projects and people are stretched out.

5 CHAIRPERSON GRIFFIS: Okay. Are you aware that the
6 Office of Planning does have a ward coordinator or a ward
7 planner?

8 MR. BRADFORD-EL: Is that Vincent? Yes, I mean, we
9 work closely with him-

10 CHAIRPERSON GRIFFIS: Okay. Those are the kinds of
11 discussions - let me just be very direct and then we kind of need
12 to move on with this in terms of other things that you want to
13 speak to in this application, but several things.

14 One, in terms of moratorium on development is well
15 beyond our jurisdiction on the BZA. What is - what may seem to
16 be as you know, projects that come in left and right, and you say
17 knee-jerk reaction, we do get specific projects based on a
18 specific variance that they need.

19 Thirdly and more importantly, we have great empathy
20 for volunteering one's time to civic responsibilities, and let me
21 say that every board member here volunteers their time on their
22 own neighborhood associations.

23 Additionally, we are here as appointments, and we
24 give up our time, and after this, we go back to our daily jobs.
25 So, we have great empathy and understanding of what it is. So,

1 when you look at us, you're not looking at the - well, I won't go
2 on.

3 So, that being said, let me have you just clarify
4 again then what specifically in terms of this application you're
5 asking us to do when you say you want this - one piece is to keep
6 the record open and actually continue this hearing to have public
7 testimony on it. Am I correct?

8 MR. BRADFORD-EL: Well, that's close. What I'm
9 asking is that this hearing be rescheduled to give the community
10 an opportunity to work with the developer to see if we have
11 compatible grounds to bring something to you together.

12 CHAIRPERSON GRIFFIS: Help me understand what kind
13 of problems that the community would see in this or that you see
14 in it that would need to be worked on.

15 MR. BRADFORD-EL: Well, see that's sort of like - I
16 don't want to get into the arguments. I mean, I see some
17 contradictions. I see some things, same - the way that you ask
18 questions up there, I would ask questions about that, and believe
19 me, if you bring them to the community, there'll be a lot more
20 questions about it.

21 And I think those questions need to be asked, not
22 just for the sake of people having answers to them, but I think
23 it's part of the growth process for the developer, because
24 obviously there's some pieces missing from this.

25 It's a little bit premature, I think, just from

1 observing it, and I think that everybody can - it can be a win-
2 win where everybody can gain from it and learn from it and future
3 development can benefit from what comes out of the process, so
4 I'm focusing more so on the process-

5 CHAIRPERSON GRIFFIS: Right.

6 MR. BRADFORD-EL: -than the content.

7 CHAIRPERSON GRIFFIS: I guess my problem is two fold
8 that I need something that's going to move this board within the
9 regulations to do that. Secondly, within our own process, this
10 has been advertised for how many days? How many days has this
11 been out on the street? When was the application in?

12 SECRETARY PRUITT: By law, we have to give - by an
13 ANC law, in fact, which changed our process, we actually have to
14 give them 30 working days, not calendar days, working days.

15 CHAIRPERSON GRIFFIS: So - but bottom line, it's
16 been over a month and a half that this has actually-

17 SECRETARY PRUITT: So, it's 45 to 56 days.

18 CHAIRPERSON GRIFFIS: -been advertised, and there's
19 been a public case file open this.

20 SECRETARY PRUITT: We also - sir, do you have access
21 to a computer?

22 MR. BRADFORD-EL: Yes, I do.

23 SECRETARY PRUITT: We have a website. You should go
24 on there - I mean, we list everything that's coming up, the cases
25 that are coming up soon that may be of interest to you, and then

1 that may give you a head start on being able to get in touch with
2 your ANC or with us through the office.

3 MR. BRADFORD-EL: Just in response to that, we've
4 been pretty much relying on the ANC to get in touch with us when
5 something is coming up that affects us, and historically, that
6 has been the case. Peter Schott, who headed up the Zoning
7 Commission for ANC 1C who was just recently resigned, so that
8 there's a breakdown.

9 Overseeing, and I don't know how you do it
10 technically, you know, that's how you decide, that the process-

11 CHAIRPERSON GRIFFIS: I guess my problem is I can't
12 change our schedule based on an ANC's schedule that didn't work.

13 MR. BRADFORD-EL: No, I'm not talking about that,
14 I'm talking about the - you know, the Supreme Court decision
15 which talks about being unable to see what everybody else can see
16 plainly.

17 It's clear to me, and I don't know about to you,
18 that there has been no community - not sufficient community input
19 into this process, and that since we are the creators and the
20 beneficiaries of the Reed-Cooke overlay, that we ought to be
21 given the kind of consideration to allow us to protect ourselves
22 from undesired development, if that be the case.

23 CHAIRPERSON GRIFFIS: Okay. Do you want to speak to
24 anything else in terms of the specific project and the
25 presentation you've seen today?

1 MR. BRADFORD-EL: I would appreciate an opportunity
2 to do that under less rushed and pressured conditions. You know,
3 because I had no knowledge of really what this was all about
4 until getting here, to hear the presentation, because what I
5 received in the mail didn't tell me anything.

6 You were listening to the presentations and looking
7 at it and having difficulty to make the connection. I had no
8 means of understanding and comprehending what it was about.

9 So, I'm not really in a position - and it's really
10 not about me, it's about my neighbors having the opportunity to
11 see this, to hear this, to comment on it, and to have an impact
12 on your decision about it.

13 CHAIRPERSON GRIFFIS: Okay. Do you want to just -
14 one of the Board Members is indicating whether you gave your
15 address when you introduced yourself.

16 MR. BRADFORD-EL: No, I didn't. My address is 2422
17 17th Street Northwest, Apartment 106, and that is Hilltop
18 Cooperative, and the zip is 20009.

19 CHAIRPERSON GRIFFIS: Okay.

20 VICE CHAIRPERSON RENSHAW: Could I ask if that is
21 the official address of the Reed-Cooke Association?

22 MR. BRADFORD-EL: The official address of the Reed-
23 Cooke Association to date is 1704 Euclid Street Northwest.

24 VICE CHAIRPERSON RENSHAW: And the same zip code?

25 MR. BRADFORD-EL: Same zip.

1 VICE CHAIRPERSON RENSHAW: 20009.

2 MR. BRADFORD-EL: Yes, ma'am.

3 VICE CHAIRPERSON RENSHAW: And who is in charge -
4 are you the president of the organization?

5 MR. BRADFORD-EL: I am the president of the
6 organization.

7 VICE CHAIRPERSON RENSHAW: All right, and this is a
8 501 C3 organization?

9 MR. BRADFORD-EL: Yes, it is a 501 C3, yes.

10 VICE CHAIRPERSON RENSHAW: Okay. All right, and you
11 have officers, you have a lineup of officers?

12 MR. BRADFORD-EL: Yes, ma'am. I will send you a
13 copy of the name of the officers and if you wish, our membership
14 list as well.

15 VICE CHAIRPERSON RENSHAW: Very good, thank you. Or
16 perhaps if we are - Mr. Chairman, are we continuing this for
17 additional testimony?

18 CHAIRPERSON GRIFFIS: I don't think we've decided
19 that. Let me get a quick clarification because the Office of
20 Planning indicated that somehow they - they indicated in their
21 report that the Reed-Cooke Neighborhood Association was reviewing
22 the application and was scheduled to vote on May 7th. Is that
23 correct?

24 MR. BRADFORD-EL: No, sir, and I'd like to ask,
25 Maxine, how did you get that information? Did you get that from

1 Eleanor Johnson?

2 MS. BROWN-ROBERTS: No, I got the information from
3 Mr. Lyden?

4 MR. BRADFORD-EL: Peter Lyden?

5 MS. BROWN-ROBERTS: Yes.

6 MR. BRADFORD-EL: No, that's not correct. Peter
7 Lyden, Vince and I tried to arrange for a meeting date. Peter's
8 schedule because he was busy dealing with a couple of other
9 projects would not allow him to make that meeting date, so we set
10 up an alternative date, which myself, Vincent and Mr. Jackson, so
11 that we could then project a date when we could put this forth.
12 See-

13 CHAIRPERSON GRIFFIS: Well, let's cut to the chase,
14 because all I care about is what the date is.

15 MR. BRADFORD-EL: Okay. Well, the date - we have a
16 meeting in two Tuesdays from today, but we are not prepared to
17 make a vote on this project in that short a time frame because
18 nobody has seen the project, and we are in the midst, as I
19 mentioned, to several others we have-

20 CHAIRPERSON GRIFFIS: Right. Now, let me just
21 caution you because although I can give some latitude in terms of
22 the amount of work you have, I cannot stop our schedule because
23 the ANC has 100 projects behind them, all those are coming to us.

24 Our schedule gets to be so tight, if I continued
25 this case, it's conceivably we're going months out.

1 Now, the reality of any development project, and
2 that's what we're involved with here, the reality has economic
3 factors on the processing and whether things go or not go
4 depending on what this board does, if we approve - my point being
5 I cannot one, encumber great continuances in our schedule because
6 it throws it all the way off, and it also doesn't work to the
7 efficiency and the effectiveness of development and more
8 importantly, this board.

9 So, that being said, I would say in that this is
10 here today, obviously we've heard it, when do you think would be
11 the most expeditious that the Reed-Cooke Neighborhood Association
12 would hear this?

13 I would think this puts it fairly on top priority
14 in that this is the only one necessarily that we have in front of
15 us in right now.

16 MR. BRADFORD-EL: You're going to have another one
17 this week.

18 CHAIRPERSON GRIFFIS: Yes. Are you prepared on that
19 - well, I don't-

20 MR. BRADFORD-EL: We're pretty much at the-

21 CHAIRPERSON GRIFFIS: Okay. I don't want to go into
22 that.

23 MR. BRADFORD-EL: Okay, that's off the record.

24 CHAIRPERSON GRIFFIS: No, it isn't.

25 [Laughter.]

1 MR. BRADFORD-EL: Well, most of it isn't either way,
2 anyway, but what's your sense of a reasonable time to see if we
3 can meet someplace in the time frame?

4 CHAIRPERSON GRIFFIS: Well, I'm not involved in it,
5 so-

6 MR. BRADFORD-EL: No, but you're ultimately have to
7 approve it, that's why I'm asking you what's reasonable.

8 CHAIRPERSON GRIFFIS: Oh. Well, what's reasonable
9 is this, that we would close the hearing today. We would set
10 this for a decision making, and we would keep the record open in
11 order to receive a written submission from the Reed-Cooke
12 Association and any vote that the Association made.

13 I would set this for decision making in two weeks,
14 allowing for the May 7th meeting to have the vote.

15 MR. BRADFORD-EL: Okay, and I would request that we
16 extend this beyond that and that you can refuse it certainly, you
17 know, I think that's unreasonable for us, realizing what our
18 reality is, and I think that 45 days is realistic for me.

19 COMMISSIONER MAY: Mr. Chairman?

20 CHAIRPERSON GRIFFIS: Yes?

21 COMMISSIONER MAY: This may not be helpful at all,
22 but it's - I've been wrestling with one of the other loose ends
23 in this - in the facts of the case, and I'm concerned about what
24 implications it has for how this was noticed. So, I'd like to
25 take a minute to discuss it with Corporation Counsel.

1 CHAIRPERSON GRIFFIS: On the record? Okay. Let's
2 make it quick, frankly.

3 COMMISSIONER MAY: The question is the way I
4 understand this to have been advertised included several
5 variances but it also included a special exception for the height
6 requirement of the Reed-Cooke overlay.

7 Now, the Reed-Cooke overlay states a height limit
8 of 40 feet. The underlying zone states a height limitation of 50
9 feet. When the applicant requests something over 50 feet, are we
10 then not backed into a variance territory?

11 Because this building exceeds, not just the Reed-
12 Cooke overlay, but also the underlying zone, and the way I read
13 the Reed-Cooke overlay paragraph, it says the most restrictive
14 zoning shall apply.

15 CHAIRPERSON GRIFFIS: Right. But then you could
16 make the case to the fact then that the relief from the most
17 restrictive would also apply, but let's hear from corporation
18 counsel, because the legal view is always important.

19 COMMISSIONER MAY: Yes.

20 MS. SANSONE: I'll need a few moments to look at
21 that, because I haven't-

22 CHAIRPERSON GRIFFIS: Okay. I think we have quite a
23 bit here. Is there anything else that you wanted to say today?

24 MR. BRADFORD-EL: Well, depending on what decision
25 you make on this, I might want to respond.

1 CHAIRPERSON GRIFFIS: You would have an opinion on
2 what we do?

3 MR. BRADFORD-EL: Oh, most certainly.

4 CHAIRPERSON GRIFFIS: I can imagine. However, we
5 have, as you are being presented as a person, we have given you
6 the time to give testimony at this point. So, now if there's not
7 anything further, I'd ask you to sit again.

8 I'm going to ask the applicant to come up. I need
9 him to respond to a few things. Then, we will proceed with a few
10 of the matters. We will be taking a quick break though to figure
11 out a couple of things.

12 So, again, I thank you for making it down here
13 today-

14 MR. BRADFORD-EL: Thank you, sir.

15 CHAIRPERSON GRIFFIS: -and don't go away.

16 MR. BRADFORD-EL: I won't.

17 CHAIRPERSON GRIFFIS: I'm sorry. In fact, I didn't
18 allow you to cross examine the testimony that was given, if you
19 wanted to take that opportunity.

20 MR. FARMER: I have two questions to ask.

21 CHAIRPERSON GRIFFIS: Okay, I'm sorry. I was
22 premature in asking you to sit down, so - no, you do not because
23 parties in a case are given the opportunity to cross examine, as
24 there was no application-

25 MR. BRADFORD-EL: Well, by notice, we didn't know to

1 do party status - well, that's another issue-

2 CHAIRPERSON GRIFFIS: It is.

3 MR. BRADFORD-EL: Okay.

4 MR. FARMER: Mr. Chairman, I'll be brief, I have
5 three-

6 CHAIRPERSON GRIFFIS: That's fine.

7 MR. FARMER: I have three questions, hopefully to
8 clarify some of the issues that have been discussed by Mr.
9 Bradford-El.

10 Sir, did you speak with Mr. Kostelac in March?

11 MR. BRADFORD-EL: On March the 5th, I spoke to Mr.
12 Kostelac.

13 MR. FARMER: Did Mr. Kostelac request an appearance
14 before the Reed-Cooke Association?

15 MR. BRADFORD-EL: No, sir. Mr. Kostelac sent me
16 some information and inquired about our next meeting and when was
17 it, and I told him when it was, and I also told him that we have
18 an agenda that is already set because we set our agendas two
19 weeks before our public meeting. We set the agenda this morning
20 for the meeting in the next two weeks on May 7th.

21 MR. FARMER: Mr. Bradford - oh, I'm sorry, you
22 finished with your - Mr. Bradford-El, were you aware of the
23 meeting of the ANC's quality of life committee on April 6th?

24 MR. BRADFORD-EL: No, sir. Matter of fact, I never
25 heard of the Quality of Life Committee, didn't know that it

1 existed and still don't know it's supposed to do.

2 MR. FARMER: Did you have an opportunity to speak
3 with the single member district member, Eleanor Johnson, in
4 relation to a meeting on April 6th?

5 MR. BRADFORD-EL: No, sir. The meeting that I had
6 planned and then I can give you the history of that - with the
7 Office of Planning was on, I believe, was it Monday or Tuesday-

8 MR. FARMER: It was the 25th.

9 MR. BRADFORD-EL: 25th, and I had set that meeting up
10 with Vincent Valdez. I got a call from Eleanor Johnson the day
11 before the meeting telling me that she had initiated a meeting,
12 and she wanted me to be a part of it, part of this project.

13 MR. FARMER: Do you know who was at that meeting?

14 MR. BRADFORD-EL: I don't - acting only in an
15 individual capacity, I knew that Mr. Abel Jackson and Mr. Peter
16 Lyden were there, and they made specific points to indicate that
17 they were there as individual residents to find out what was
18 going on. I may have Abel's message on my phone, and you can
19 hear what his comments were as to what the meeting was about.

20 CHAIRPERSON GRIFFIS: The 25th of what month.

21 MR. FARMER: April.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. FARMER: I have no further questions for Mr.
24 Bradford-El.

25 MR. KOSTELAC: I have a few actually.

1 CHAIRPERSON GRIFFIS: You need to turn on your mike.

2 MR. KOSTELAC: Mr. Bradford-El, have I called you on
3 a number of occasions about this project?

4 MR. BRADFORD-EL: We talked on one occasion, and you
5 have left me some messages on my phone service.

6 MR. KOSTELAC: How many messages do you think I've
7 actually left you?

8 MR. BRADFORD-EL: Probably about three.

9 MR. KOSTELAC: How many times have we actually
10 talked in person about this project?

11 MR. BRADFORD-EL: In person?

12 MR. KOSTELAC: No, or on the phone.

13 MR. BRADFORD-EL: Just once to my recollection.

14 MR. KOSTELAC: Did you - did I not call you once and
15 you said you'd call me right back and we didn't have a
16 conversation after-

17 MR. BRADFORD-EL: That may have been possible. That
18 may have been possible, during the course of the day, I'm very
19 busy sometimes I may be on one line and another line will come
20 through, and I'm talking to the other person, and I'm getting at
21 a point, I'm 56, and the memory is not like it used to be.

22 MR. KOSTELAC: What is Mr. Lyden's position relative
23 to the Reed-Cooke?

24 MR. BRADFORD-EL: He is the Chair of the Colortone
25 Development project committee.

1 MR. KOSTELAC: So, he is on the Reed-Cooke, and he
2 is also reviewing projects, variances, et cetera?

3 MR. BRADFORD-EL: No, sir. His appointment was
4 specific to the project known as the Colortone Development
5 Project.

6 MR. KOSTELAC: Who is Mr. Ed Jackson and what's his
7 relationship to the Reed-Cooke?

8 MR. BRADFORD-EL: Ed Jackson is one of the founding
9 members of the Reed-Cooke Association former presidents and a
10 mentor for myself and his position with Reed-Cooke is member.

11 MR. KOSTELAC: Did he draft or participate
12 substantially in drafting the original Reed-Cooke development
13 plans?

14 MR. BRADFORD-EL: No, Ed - Mr. Jackson contributed
15 to the development of the Reed-Cooke. Mr. Drew Wexler and Bill
16 Dent were primarily responsible for the drafting.

17 MR. KOSTELAC: And who's Mr. Steve Coleman?

18 MR. BRADFORD-EL: Steve Coleman is a board member of
19 - well, it's questionable because he just resigned, and I don't
20 know - we haven't received it in writing, but he was a board
21 member of the Reed-Cooke Neighborhood Association.

22 MR. KOSTELAC: Is there a lot of turnover within the
23 Reed-Cooke Association and its directors and administrators?

24 MR. BRADFORD-EL: No, sir. No, sir, it's kind of
25 hard to get people to take the work, it's a lot of work.

1 MR. KOSTELAC: Do some of the members of the ANC in
2 the zones, do they represent and speak for the people who also
3 represent the Reed-Cooke?

4 MR. BRADFORD-EL: I'm not clear on your question,
5 sir.

6 MR. KOSTELAC: Well, aren't - these are overlapping
7 entities, the ANC and the Reed-Cooke, is that accurate?

8 MR. BRADFORD-EL: No, sir. In fact, in most cases,
9 as a matter of record, we end up having different positions.
10 Councilman Graham has been trying and working very hard to try to
11 mediate that whole relationship, and I think the only thing we
12 have done jointly in a number of years was the Reed-Cooke
13 district with Mr. Misok and myself sit on the same panel.

14 MR. KOSTELAC: But geographically, does the Reed-
15 Cooke group and its geographical limitations overlap with the
16 ANC?

17 MR. BRADFORD-EL: Well, the ANC covers all of Adams
18 Morgan and Reed-Cooke is very limited to just two single member
19 districts set inside of Reed-Cooke. We have since tried 38
20 almost probably.

21 MR. KOSTELAC: But the ANC covers the entire city
22 and is very specific in its designation and the Reed-Cooke is a
23 part of some of those ANC groups, is that correct?

24 MR. BRADFORD-EL: There's a difference between the
25 ANC and Reed-Cooke that goes beyond physical difference.

1 Different ideology, different constituent services and in most
2 cases, it's a very different view point on most issues.

3 The - we just had a split on the parking issue, the
4 parking lot issue. The ANC went one way, the citizens, not just
5 Reed-Cooke, but all the citizens such as KCA and Langley Heights
6 went another route. On the Reed district in the same thing.

7 It's been historically true for the new ANC. Back
8 during the time that the overlay was done, Mr. Jackson sat with
9 both the ANC representative and the Reed-Cooke board member, and
10 there was some cooperation, and that's why the overlay was passed
11 through that Reed-Cooke cooperation.

12 MR. KOSTELAC: And one last thing, you say you
13 didn't see the posting in front of the building, is that correct,
14 the red poster?

15 MR. BRADFORD-EL: Let me tell you something about
16 Reed-Cooke - I put up flyers for Reed-Cooke Association, and I've
17 got a good little group of youngsters, you know, we pay them, and
18 we had to put them up three times, because some people in the
19 neighborhood just like the idea of jerking things down, you know,
20 and I'm not saying that they weren't put up, but-

21 MR. KOSTELAC: No, I was asking about the official
22 red placard that's put up-

23 MR. BRADFORD-EL: It's the same thing, same thing.
24 They come down, too.

25 MR. KOSTELAC: So, you didn't see either the red

1 placard in front of the building, or the flyers that were put out
2 - I think there were 400 flyers put out by one of the chairman of
3 the ANC for any informal community-wide meeting outside of the
4 requirements of the law. You did not see any of those flyers?

5 MR. BRADFORD-EL: I really did not see any of the
6 300 or 400 flyers.

7 MR. KOSTELAC: Thank you very much.

8 CHAIRPERSON GRIFFIS: What is the - how are members
9 established in the Reed-Cooke Association, are there dues and is
10 there a tenure to the members?

11 MR. BRADFORD-EL: No, membership is open to anyone
12 who is a resident in the neighborhood, a pastor of a church in a
13 neighborhood - in the neighborhood, and there's a ten-dollar dues
14 which can be waived for swept equity or severe distress. There's
15 no other requirements.

16 CHAIRPERSON GRIFFIS: That ten dollars - did you see
17 ten dollars a year?

18 MR. BRADFORD-EL: Ten dollars a year, yes.

19 CHAIRPERSON GRIFFIS: Okay. And you indicate that
20 you have over 200 dues-paying members?

21 MR. BRADFORD-EL: No, I didn't say dues members. I
22 said I have over 200 active members. All of the members can't
23 afford to pay a due or don't choose to pay the dues. Some
24 members are on without the dues being paid.

25 CHAIRPERSON GRIFFIS: Okay. All right. Is anyone

1 else here to testify today? Very well. Let's - and I thank you
2 again. I think your piece is done with this as cross
3 examination. Corporate counsel looks like she may have gone to
4 do some research. I would suggest that we take 15 minutes, come
5 back at 5:30 and then figure out where we're going from here.

6 (Whereupon, the foregoing matter went
7 off the record at 5:15 p.m. and went
8 back on the record at 5:33 p.m.)

9 CHAIRPERSON GRIFFIS: What I'm going to do today is
10 get through all of our public hearing requirements, which means I
11 will have - give you the opportunity for closing remarks and
12 summation at this point.

13 Then, what - let me just lay it all for you here,
14 and what we're anticipating doing is setting this for decision
15 making.

16 For those unfamiliar, the first Tuesday of every
17 month is our public meeting, and that is there no public hearing;
18 it is decision makings on applications that we have had a full
19 public hearing on.

20 We would set that for June - the first Tuesday in
21 June as May 7th is just around the corner and we are packed for
22 that one, and I will have feedback from the applicant on all
23 these schedules just to make sure that we're okay with this.

24 We will have a list of certain things that we'll
25 want submitted in - prior to the decision making and we will

1 outline all those as my opening remarks of the hearing indicated,
2 and we'll give you timings on that.

3 So, to that, did the applicant just want to comment
4 on the decision-making date? June 4th - it would be June 4th, and
5 it would probably be - I would do all of it in the morning, so it
6 would be mid-morning. Again, it's not required that you're here,
7 but obviously it's the decision.

8 SECRETARY PRUITT: There's no testimony.

9 CHAIRPERSON GRIFFIS: Right, there's no public
10 testimony.

11 MR. FARMER: I understand that, Your Honor. I guess
12 my concern is you said they would be asking us to produce
13 additional material-

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. FARMER: -and I guess my concern and question
16 about the June 4th date is in relation to what needs to be
17 produced.

18 CHAIRPERSON GRIFFIS: We want a full-size model, 100
19 percent.

20 [Laughter.]

21 MR. FARMER: He can do it.

22 CHAIRPERSON GRIFFIS: Right. No, let me run down,
23 and it's very standard stuff. First of all, we want to keep the
24 record open for - we might as well get into this, and then we'll
25 get to closing.

1 We're kind of topsy-turvy here, but there it is,
2 and I'm going to rely on my Board and also Staff, because I think
3 I've spewed out quite a bit of stuff, and I don't keep great
4 notes.

5 First of all, we're going to keep the record open
6 for the ANC report, which we have not received yet. We're going
7 to keep the record open to receive - at the Board's discretion,
8 however, we will review letters from the community, anyone that
9 sees fit, and I will give you end dates when the record will
10 close on this.

11 We will also request that the Reed-Cooke
12 Association give us in writing their decision on any decision
13 making that they have done as an association.

14 We would also ask, as we ask of all of our
15 associations, just to give, as you've indicated, the breakdown of
16 the association and, you know, the size, the members, what's a
17 quorum, the date that notice of the meeting and also the vote
18 that was upheld; very similar to what the ANC is required.

19 We would like to ask the applicant to submit
20 findings of fact and conclusion of law on this.

21 We would also like to have a briefing, and this is
22 new that has come to light by one of the Board Members. We need
23 to have a briefing on why the height relief is a special
24 exception and not a variance.

25 And let me give you a quick indication of the fact

1 of one interpretation can be in the Reed-Cooke overlay that it's
2 a - not its interpretation, its strict reading of it is the
3 special exception of the height limitation, but there is an -
4 there could be an interpretation that says that special exception
5 allows you to go to 50 feet, which would be a matter of right
6 within the R-5-B, and then a variance would need to take you
7 beyond 50 feet.

8 So, that is the issue that we'd like addressed,
9 whether that's true or not, in terms of your interpretation.

10 MR. FARMER: Let me - can I just phrase a question?

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. FARMER: Looking at the language in the zoning
13 regulations themselves, and I believe in the special exceptions,
14 which is 1403, it speaks to the requirements of this chapter as -
15 and I think is that the question you're really asking?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. FARMER: Okay.

18 CHAIRPERSON GRIFFIS: I mean, I guess we could go
19 further. Ms. Sansone, if you want to-

20 MS. SANSONE: Yes, Mr. Chairman, I think that's the
21 issue. It's - that provision talks about the requirements of
22 this chapter, meaning the Reed-Cooke chapter.

23 However, there's an earlier provision that says
24 that the more restrictive of the underlying or overlaying zoning
25 regulations apply, and the underlying zoning regulations would be

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1 the R-5-B. So, that's the issue.

2 CHAIRPERSON GRIFFIS: That's the crux of it, is the
3 special exception 40 to 50 feet and then you need to go to the
4 more restrictive regulation where the more restrictive regulation
5 is a variance that takes you above 50 feet.

6 Again, just a briefing on that would, I think, be
7 very helpful in the deliberation. Now, that is going to need to
8 be expedited in terms of - I see the indications of - let me not
9 forget, but we'll see if there's an opportunity for that.

10 Anyway, that's going to need to be expedited
11 because obviously that goes to findings of fact and conclusions
12 of law and the test that you're going to be putting together
13 before the decision making.

14 So, I'm going to ask you to give me an idea of when
15 you could. We would obviously love to have that middle of next
16 week, end of next week.

17 MR. FARMER: You want it, you get it.

18 CHAIRPERSON GRIFFIS: I mean, be realistic, because
19 I mean - this is not everything. I'm just asking on the briefing
20 of the issue of the variance and/or special exception on the
21 height.

22 MR. FARMER: I think I can do that, Your Honor.

23 CHAIRPERSON GRIFFIS: Okay. I think that would just
24 be helpful for everybody involved, so, if we can do that.

25 SECRETARY PRUITT: I'm sorry, Mr. Farmer, what date

1 did you say?

2 MR. FARMER: You're looking for the middle of next
3 week, which was May-

4 SECRETARY PRUITT: May 1st is the middle of the week.

5 MR. FARMER: May 1st is tomorrow. So, you're looking
6 at May 7th, May 8th.

7 CHAIRPERSON GRIFFIS: May 8th is a Wednesday. I
8 mean, I think-

9 SECRETARY PRUITT: Yes, May 8th is a Wednesday.

10 CHAIRPERSON GRIFFIS: I think if May 8th is
11 submitted, would be great. I think if it's by the end of next
12 week, that's fine. I'll give you some, you know, wiggle room on
13 that, but I think clearly by the end of next week.

14 SECRETARY PRUITT: Because we actually do - even to
15 allow for everything to come in, it's going to be a little tight
16 at least - my understanding is you want to leave the record open
17 for the Reed-Cooke organization to submit information and anyone
18 else who did not submit any information is allowed to submit into
19 the record written testimony, but that would be due by May 10th,
20 and the applicant has a week to the 17th to respond.

21 And then findings of fact would be due May 23rd,
22 which is a week later, which typically we provide a week - so the
23 ANC would also be able to respond because they're an automatic
24 party, if they choose to, and they could also submit findings of
25 fact.

1 MR. FARMER: So, the record is open - let me make
2 sure I've got this. The record-

3 SECRETARY PRUITT: The record is open for everything
4 until May 10th.

5 MR. FARMER: Okay.

6 SECRETARY PRUITT: After that, it's closed and we'll
7 only be taking in specific things, such as responses from the
8 applicant or the ANC which is the only other entity that has
9 party status.

10 MR. FARMER: The record is open till May 10th, we've
11 got findings of fact due-

12 SECRETARY PRUITT: Two weeks later.

13 CHAIRPERSON GRIFFIS: After May 10th.

14 SECRETARY PRUITT: May 23rd.

15 MR. FARMER: May 23rd.

16 SECRETARY PRUITT: For a June 4th meeting.

17 MR. FARMER: Then, correct me if I'm wrong, you
18 mentioned responses?

19 SECRETARY PRUITT: You can respond to whatever came
20 into the record.

21 MR. FARMER: On May 10th?

22 SECRETARY PRUITT: From May 10th, yes.

23 MR. FARMER: Okay.

24 SECRETARY PRUITT: It's a week to respond. 17th,
25 excuse me. You have to respond by the 17th to anything that has

1 come in on the 10th.

2 SECRETARY BAILEY: Mr. Chairman, there is a document
3 that was discussed during the hearing, and that is a Memorandum
4 of Understanding. That document has not been submitted in the
5 record, and I just wanted to know did you want to add that to
6 your list of items to come in?

7 CHAIRPERSON GRIFFIS: I absolutely appreciate you
8 reminding me of that. I think for the Board, in that it came up
9 in terms of the hearing today is any specifics you want to give
10 us, but more importantly, we just need to see whether it's signed
11 or not signed or what the status of it is.

12 MR. FARMER: Well, let me be real plain about it.
13 We've not represented - we have not represented before this Board
14 that we have a signed Memorandum of Understanding-

15 CHAIRPERSON GRIFFIS: Right, and no, that's clear.

16 MR. FARMER: We've drafted one, we've discussed it-

17 CHAIRPERSON GRIFFIS: Right.

18 MR. FARMER: -with certain of Reed-Cooke's members.
19 We've discussed it with the ANC. You know, a signature - it's
20 just like anything, the ANC letter is obviously problematic, but
21 again, obviously there are issues, with relation to Reed-Cooke
22 and getting that signed, so obviously-

23 CHAIRPERSON GRIFFIS: Again, and this Board has
24 clear understanding of what was in the Memorandum of
25 Understanding may have nothing to do with the zoning that we're

1 having to deal with and in our deliberations, but that it came
2 up, obviously if it gets signed and agreed on, you would submit
3 it in.

4 So, what we want to do is keep the record open, so
5 that we could receive that if that was done, in that it was
6 spoken to today. If we don't see it, I don't think it has any
7 detriment to our deliberations. I mean, it's a common
8 occurrence.

9 Okay. What else do we have? Let's look at that.
10 Let me just make a quick statement on in terms of keeping the
11 record open.

12 I'm always kind of concerned to keep the record
13 open; one, because it's incredibly burdensome on us to have to go
14 through and through a lot of things, so my direction for people,
15 as the word goes out to the community, in putting in letters,
16 we're going to need letters that go directly to the zoning issues
17 that are at hand, and that is to the advertised issues for
18 relief, and it - you know - well, and more clearly, this board
19 doesn't deliberate based on a popularity contest either.

20 I don't know any board members, and I certainly
21 don't deliberate, and I don't think our decisions show that we
22 count up how many letters of support as opposed to how many
23 letters of opposition.

24 So, quantity isn't important; it's quality, when
25 one speaks to the issues. So, that being said, we can move on.

1 Office of Planning, actually, why don't you speak to - I'm not
2 sure that there's a real need for a revised memo, unless you see
3 one.

4 MS. BROWN-ROBERTS: No, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Okay, so you'll stand on the
6 report that's been submitted.

7 MS. BROWN-ROBERTS: Yes.

8 CHAIRPERSON GRIFFIS: Okay. What else do we have?

9 SECRETARY PRUITT: If you'd like, I just want to go
10 back over the dates so everybody's very clear. May 10th - excuse
11 me, May 8th, brief is due from the applicant. Submissions - the
12 record will be left-

13 MR. FARMER: I'm sorry. May 8th-

14 SECRETARY PRUITT: Yes.

15 CHAIRPERSON GRIFFIS: Between the 8th and 10th, but
16 there it is.

17 SECRETARY PRUITT: Okay.

18 MR. FARMER: May 10th.

19 SECRETARY PRUITT: We can scratch it to the 10th,
20 let's make it the 10th. Okay. That is also when submissions from
21 Reed-Cooke and anyone from the community must have in everything
22 - the record for just regular testimony will close on the 10th.

23 Now, you will be able to respond to anything that's
24 in the record by May 17th, the following week, and then the
25 following week, you can produce - if you wish, draft findings of

1 fact along with the ANC.

2 MR. FARMER: All right.

3 COMMISSIONER MAY: Just to clarify the ANC report,
4 if it's going to go into the record, it needs to be here on the
5 10th?

6 SECRETARY PRUITT: Yes.

7 COMMISSIONER MAY: So, anything that can be done to
8 help the ANC produce that would be helpful to us.

9 CHAIRPERSON GRIFFIS: Yes. Okay.

10 SECRETARY PRUITT: Thank you.

11 CHAIRPERSON GRIFFIS: Is that clear?

12 MR. FARMER: I think so.

13 CHAIRPERSON GRIFFIS: Okay. And clearly Staff can
14 answer the questions if we lose dates or anything like that.

15 MR. FARMER: Right. I'll call Ms. Pruitt if
16 necessary.

17 CHAIRPERSON GRIFFIS: Great. Okay. Did you have
18 something you wanted to say briefly? Okay, let me just interrupt
19 our flow here and you're going to need to come up to the mike.
20 Otherwise, you're not on the record, and then I want to turn it
21 back over to the applicant for closing and summary.

22 MR. BRADFORD-EL: I appreciate your condolences.
23 The question I have if there's a legal question as to whether or
24 not the variance is more restrictive and if that be the case, do
25 we get an opinion of the corporate counsel in advance to this as

1 government agencies usually do or an opinion from corporate
2 counsel on that-

3 CHAIRPERSON GRIFFIS: But - this is what we'll do,
4 and what I've asked has actually put the burden on the applicant
5 to brief the issue, and that's what they're submitting by the
6 10th; hopefully, sooner, but by the 10th.

7 We will look at that brief, we will look at our own
8 deliberations and corporate counsel's review. The Board will
9 make a decision on whether the height is actually a special
10 exception or a variance case.

11 Now, a small digression, yes, it could be said that
12 special exception is easier, but not in every case, and special
13 exception cases, a test is not necessarily easier than a
14 variance, but that being said. Is that clear?

15 Then, after that, the Board will then, with its
16 decision, serve that on the parties. The parties in this case
17 are the applicant and the ANC. Those are the only two
18 notifications that will go out from this board as to the judgment
19 on the relief requested.

20 MR. BRADFORD-EL: That's where my other question
21 lies, that it is the variances which is the least restrictive,
22 then proper notice was not given, and that then turns - opens the
23 door back up to opportunity for party status.

24 CHAIRPERSON GRIFFIS: It does and it doesn't.

25 MR. BRADFORD-EL: Oh, okay.

1 CHAIRPERSON GRIFFIS: The Board did deliberate on
2 that, because that was our big issue, and we have in the past,
3 and we are currently look at the application in terms of the
4 notification and the announcement of the relief sought, in the
5 fact and the specifics of this case that there were three
6 variances - I should probably read that in front of me before I
7 waiver off in this late afternoon and lose specifics.

8 SECRETARY PRUITT: Three variances.

9 CHAIRPERSON GRIFFIS: There were three variances-

10 SECRETARY PRUITT: FAR, lot occupancy and non-
11 conforming.

12 CHAIRPERSON GRIFFIS: -identified in special
13 exceptions, but the point is all the notification clearly
14 signified that there was a variance going to this and a special
15 exception.

16 If the special exception goes away, and a variance
17 is added, it is not this board's opinion that that changes the
18 application so dramatically that it would have influenced any
19 public testimony or public opinion or involvement in this case
20 and so, therefore, we're not asking for a re-notification and a
21 re-announcement of this application, nor are we continuing the
22 public hearing. Anything else?

23 MR. BRADFORD-EL: No, that's fine.

24 CHAIRPERSON GRIFFIS: Okay.

25 SECRETARY PRUITT: However, sir, the brief will be

1 available in the folder, so you're more than welcome to - it's
2 part of the public record, so you will have access to it.

3 CHAIRPERSON GRIFFIS: Okay. And the applicant has
4 indicated that they'll provide a copy also, so we love that good
5 faith stuff, so we'll keep that going.

6 MR. FARMER: I guess as far as having my cake and
7 eating it too, should I address both standards in the brief?

8 CHAIRPERSON GRIFFIS: Both - you mean the findings
9 of fact?

10 MR. FARMER: Special - well, yes.

11 SECRETARY PRUITT: In the brief or findings of fact?

12 MR. FARMER: Actually, I was thinking initially of
13 the brief.

14 CHAIRPERSON GRIFFIS: Well, the brief, what I want
15 you to do is just look to brief us whether you think it is a
16 variance or special exception. The findings of fact will be
17 based on what we decide on it. That's why there's a rush to get
18 that brief in.

19 MR. FARMER: Right. Okay.

20 CHAIRPERSON GRIFFIS: Does that make sense. I mean-

21 MR. FARMER: Well, let me real plain about what my
22 concern is. That notice was reviewed with the zoning staff and
23 the zoning administrator as well, so I'm kind of thinking it
24 would probably be best for me to consult with them as well before
25 I put forth this brief.

1 I don't think that's a problem time wise, but I
2 just wanted you to be aware of that. I'm thinking in terms of
3 the actual content of the brief itself to the extent that not any
4 more addressing strictly the legal issue, but I think I will also
5 be addressing how it affects this case.

6 CHAIRPERSON GRIFFIS: Right. I don't

7 MS. SANSONE: Mr. Chairman, since the proposed
8 findings of fact and conclusions of law are due before the Board
9 makes the decision, it would probably be to the applicant's
10 advantage to address both standards and put them in the
11 alternative. That way, he's covered both ways.

12 CHAIRPERSON GRIFFIS: And that's where you were
13 going with, right?

14 MR. FARMER: Exactly.

15 CHAIRPERSON GRIFFIS: And that - you know, I'm not
16 going to stop you from doing more work, but trying to get it down
17 to a little less, but that's fine.

18 MR. FARMER: Okay.

19 CHAIRPERSON GRIFFIS: Okay. Take a deep breath, and
20 we'll turn it over to you when you're ready, sir, to-

21 MR. FARMER: If I could have Mr. Kostelac join me at
22 the table.

23 Mr. Chairman, in summation, I'd like to address
24 some of the issues that were raised by Mr. Bradford-El, just in
25 terms of notice and the process and what's going on here, just so

1 the Board is clear as to exactly how we got to this particular
2 point today.

3 I think it's very important to understand that
4 we've started this process in developing this building at the
5 site very early.

6 We've made numerous community contacts with members
7 of Mr. Bradford-El's own organization. We've had different
8 meetings, et cetera. As a matter of fact, we were the ones who
9 produced 400 flyers, which were delivered door to door, notifying
10 individuals of that meeting.

11 Specifically, what I'm concerned about, in terms of
12 the notice, questions that are raised here today or any questions
13 of good faith, we started very early in this process, contacting
14 members of the community, the council member, the ANC and
15 ultimately, some of our direct neighbors.

16 Specifically, as you see I assume in the record the
17 letter from Council Member Graham's project was discussed with
18 him. On many other occasions we contacted the Office of Planning
19 early on a conceptual basis before we moved forward with the
20 application itself.

21 We contacted each and every member of the ANC. We
22 spoke to each and every member of the ANC prior to the ANC
23 meetings. We spoke to the chairperson - Mr. Bradford-El alluded
24 to the Quality of Life Committee. Yes, the ANC did change its
25 structure mid-stream.

1 My understanding is they converted these the zoning
2 commission into something called the Qualify of Life Committee.
3 We went to the single member district member.

4 She championed and chaperoned certain meetings with
5 the community. Community members showed up, some of which
6 members of Mr. Bradford-El's own organization. Mr. Kostelac
7 contacted Mr. Bradford-El. He asked to be placed upon the
8 schedule.

9 I think, as I look at it, we have left no rock
10 unturned in terms of notice. The signs have been up, the signs
11 have been behind glass, they have been maintained, they have not
12 disappeared.

13 Public notice was given, we did produce the mailing
14 labels for the BZA notices. Those were properly mailed. I even
15 received one myself. So, therefore, we know that that was
16 properly done.

17 So, I didn't want this board left with the
18 impression that there was anything done that was improper or was
19 not really adequate in terms of contacting the community.

20 I think, as you will recognize, the fact that
21 people aren't here, may be a reflection of the fact that we have
22 been so diligent in our efforts to contact the community and
23 address their specific concerns.

24 We thank the Office of Planning for their
25 sponsorship of certain meetings, but again, we've made that as a

1 complete effort. Do you want to say anything on that?

2 MR. KOSTELAC: Yes, I would like to add that I felt
3 that this project was originally derived out of the Reed-Cooke
4 procedures that I could read in the books of zoning.

5 I started with that, I started to talk with as many
6 people as early as August of last year and even earlier than that
7 to pitch my early concepts for what might become of this space or
8 what we could do to save this building and add value to it and to do
9 various things and I derived all of that out of the Reed-Cooke.

10 And because it's a process one has to learn as you
11 go through it, I turned to anyone who would talk about the
12 subject in any position of just as a citizen or an authority to
13 direct me to other people who to contact, and in that process, I
14 met with and spent any length of time that anyone would give me
15 to talk about the project.

16 The - even the ANC board in voting unanimously for
17 this project, complimented us on the fact that they have never
18 seen a development team or an individual be so exhaustive in
19 reaching out to the community to conceive of a project, develop
20 the project and popularize the project, and I definitely think
21 that the fact that there is - this room is nearly empty was to
22 testify to that fact, it's a very busy area with a lot of
23 development on everybody's lips, and so if there was a lot of
24 grounds, well, I think we would see something of it here.

25 But I called everybody I possibly could, and gave

1 them any amount of time that they would be interested in. I was
2 very vigilant about that, and that process has gone on for well
3 over a year, and unfortunately, this is the first time I've ever
4 had actually the opportunity to meet Mr. Darnell-El or hear any
5 of his views on this project, though I called him many, many
6 times.

7 But on another front, in terms of the nature of
8 this project, I live in this neighborhood. I've been living
9 exclusively in the neighborhood of this project since I moved to
10 town in the late '80's and so I wanted as a person who continues
11 to live in this neighborhood to do something that was a win-win
12 situation for everybody.

13 To be characterized as a deep pockets developer
14 would be a disservice to me. On my days when I'm not wearing a
15 suit, I'm hanging drywall in the various buildings that I'm
16 doing. I'm the guy who's hammering the nails, et cetera. I have
17 a small craft company, and I've always tried to keep in the City,
18 and it is true that all the people who work for me walk to work.

19 So, I felt like I was of the community and this was
20 a win-win project, and to the extent humanly possible, I have
21 attended to any interest that anyone has ever brought to me on
22 this project. Thank you.

23 MR. FARMER: Mr. Chairman, I recognize that we're
24 going to be briefing and providing findings of fact and
25 conclusions of law on the variance and special exception areas.

1 I'll keep my remarks on those particular issues very short.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. FARMER: Looking at the variances that we've
4 requested as well as the special exception, again what's really
5 driving this project and the need for variances is the building
6 itself, and the uniqueness of that particular building.

7 It's very, very important that this board
8 understand that it's our intention to save the entire fabric of
9 that building, because we believe it is such an architecturally
10 significant building, both for the neighborhood and the City as a
11 whole.

12 That is really the factor that is driving this
13 development in terms of its overall development, its height and
14 has dictated the set back.

15 We've attempted to fit this particular project into
16 the community in the way that is most beneficial for everyone
17 involved. Those set backs produce light for the street. They
18 produce livable units, add additional housing, and all this is
19 done really at no cost to the neighborhood itself.

20 There is no adverse effect on the community from
21 this particular project. We're adding light to the street, we're
22 adding life to the street, we're increasing the residential.

23 No one's being displaced by this particular
24 project, and even equally as important, I believe as Mr. Kostelac
25 indicated, we have bent over backwards to make sure that this

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1 very popular business, the Blue Knob stays in this community at
2 this location.

3 He's been displaced several times over the last
4 several years but again, we have done extraordinary things in
5 terms of the development to make sure that he can stay and run a
6 viable business, which is popular in the community.

7 We believe that we've met the standards for local
8 variances and the special exceptions as standard, and if need be,
9 we can meet the standards for the height variance as well, as we
10 will later show, and on that basis, we would ask that, when the
11 time comes for the Board to vote affirmatively on our behalf.

12 CHAIRPERSON GRIFFIS: Good. Thank you very much.

13 MR. FARMER: Thank you.

14 CHAIRPERSON GRIFFIS: First, I think most of the
15 Board Members know it as the Brass Knob, but that's just a
16 misspoken color, but that's wonderful, and it is in the record.

17 Second, I want to underscore and reiterate the fact
18 that really it is of utmost importance for us as this Board
19 takes, obviously, our responsibility very seriously, but also
20 each application, we get into it quite a bit, which you saw. We
21 were really laboring with the questions and the information that
22 we needed.

23 So, my point here is that I need very strong
24 emphasis on the tests to the variance, and again, I will
25 underscore the fact that we do not run a popularity contest here.

1 When we have issues that come up in opposition, we look to those
2 pieces in opposition that go directly to the test for the relief.

3 So, I appreciate you giving us a summary of all
4 those things, because it is a burden, and frankly, it was stated,
5 you know, the deep pocket developer has the resources to go out
6 and put together teams and do all sorts of outrage and the
7 smallers don't, and we've - I think I can speak from experience
8 in the applications that we get in, the smaller people doing
9 smaller job don't necessarily have the ability to go out and get
10 huge coalitions and bring people in, but obviously, you're
11 stating that you have done quite a bit to get out there.

12 But again, it's the substance of the test that we
13 need to look to, and that's what has been spoken to today, but we
14 also look into the additional submissions. Mr. May, you had
15 something?

16 COMMISSIONER MAY: I just had a quick question, you
17 referred to a letter of support from Council Member Graham?

18 MR. FARMER: Yes, sir.

19 COMMISSIONER MAY: I checked my copy of the record.
20 Do you have it, anybody else have it?

21 CHAIRPERSON GRIFFIS: I appreciate you saying that,
22 because I took note of that, too.

23 COMMISSIONER MAY: Yes, I don't remember reading it,
24 and I just checked my file-

25 VICE CHAIRPERSON RENSHAW: I don't see anything in

1 the main file.

2 MR. FARMER: It was in the file as of a week ago.

3 VICE CHAIRPERSON RENSHAW: You don't happen to
4 remember the exhibit number, do you?

5 MR. FARMER: I don't, but I may have a copy in the
6 office with that, but that letter was actually sent and received,
7 I believe, in the first week of March.

8 CHAIRPERSON GRIFFIS: Was it within another
9 submission?

10 MR. FARMER: No, it wasn't.

11 CHAIRPERSON GRIFFIS: It was individual.

12 MR. FARMER: I would surmise it's with the original
13 set of plans.

14 CHAIRPERSON GRIFFIS: All right. Well, I'm not
15 going to take the time here. The Board didn't see it, so I would
16 ask you to send in your copy or get a new copy of that, and we'll
17 have that out fairly quickly.

18 And then frankly, with the amount of - this is not
19 typical, but with the amount of discrepancies we've had on this
20 file, I would ask you just to take a moment to review the case
21 file that's here and make sure that everything you assume is
22 there, is there.

23 And with that, we will also need submitted into the
24 record, photographs of the model or any way you want to represent
25 as it was presented here today. We obviously have to have it in

1 the official record.

2 What else? Am I missing anything else? Well, we
3 missed a sunny day, I'll tell you that, because it looks like
4 it's getting cloudy, but listen, in all seriousness, I appreciate
5 your time spending down here this afternoon.

6 Everybody that's been involved in this case, and I
7 certainly look forward to all the submissions that are coming in
8 and looking forward to perhaps seeing you all on the 4th of June,
9 and we will be in touch by paper up until then.

10 So, with that, I would conclude the afternoon
11 session of the 30th of April, 2002, and wish you all a very good
12 evening.

13 (Whereupon, the foregoing matter was adjourned at
14 6:04 p.m.)
15